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72] OLRB REP.

PAGES 1 - 121

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JANUARY

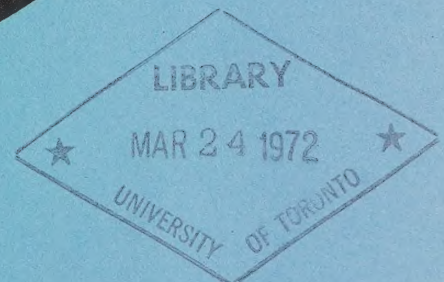
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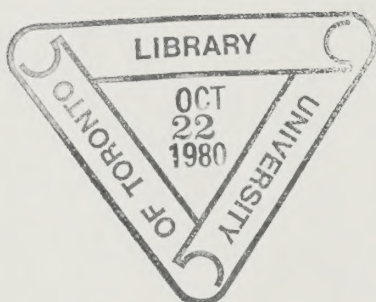


ONTARIO

Monthly Report



ONTARIO LABOUR RELATIONS BOARD



CASES REPORTED

ABE DICK MASONRY LIMITED RE 1) TRICON CONSTRUCTION CORPORATION; 2) LABOURERS INT'L UNION OF NORTH AMERICA, LOCAL 837; 3) UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 18	74
ATLAS STEELS COMPANY, A DIVISION OF RIO ALGOM MINES LTD. RE CANADIAN STEELWORKERS UNION OF CANADA RE UNITED STEEL- WORKERS OF AMERICA	50
BEACON HILL LODGES OF CANADA LTD. RE BUILDING SERVICE EMPLOYEES INT'L UNION LOCAL 183, AFFILIATED SEIU, A.F.L., C.I.O., C.L.C.	49
BERMINGHAM CONSTRUCTION LTD. RE UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA	72
BOARD OF EDUCATION FOR THE CITY OF TORONTO RE OPERATIVE PLASTER- ERS' AND CEMENT MASONS' INT'L ASSOCIATION LOCAL 48 RE INT'L BROTHERHOOD OF PAINTERS AND ALLIED TRADES, LOCAL UNION 557 RE TORONTO BUILDING AND CONSTRUCTION TRADES COUNCIL	90
CON-DIGN LTD. RE LABOURERS' INT'L UNION OF NORTH AMERICA, LOCAL 493 RE GROUP OF EMPLOYEES	83
COPE A. & SONS LTD. RE INT'L UNION OF OPERATING ENGINEERS, LOCAL 793 RE UNITED GLASS & CERAMIC WORKERS OF NORTH AMERICA (AFL-CIO-CLC) AND ITS LOCAL 224 RE LABORERS' INT'L UNION OF NORTH AMERICA, LOCAL 837 RE TEAMSTERS LOCAL 879 AFFILIATED WITH THE INT'L BROTHERHOOD OF TEAMSTERS, CHAUF- FEURS, WAREHOUSEMEN & HELPERS OF AMERICA RE GROUP OF EM- PLOYEES	77
CORPORATION OF THE TOWN OF BURLINGTON RE EGBERT WITTEN RE THE CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 44, RECREATION DEPARTMENT	73
CORPORATION OF THE TOWN OF MARKHAM RE H. M. ARNOTT, ET AL RE LOCAL 1219, CANADIAN UNION OF PUBLIC EMPLOYEES RE CANADIAN UNION OF PUBLIC EMPLOYEES	36
DELLELCE CONSTRUCTION AND EQUIPMENT AND DELL CONSTRUCTION (SUD- BURY) RE INT'L UNION OF OPERATING ENGINEERS, LOCAL 793 RE UNITED STEELWORKERS OF AMERICA	60

ESSEX INT'L OF CANADA LTD. RE MRS. ODETTE VAN DER WOLF RE UNITED STEELWORKERS OF AMERICA, DISTRICT NO. 6	104
EXCELLENCE ELECTRICAL CONSTRUCTION RE INT'L BROTHERHOOD OF ELEC- TRICAL WORKERS LOCAL UNION 1687 RE GROUP OF EMPLOYEES	44
EXTENDICARE (CANADA) LTD. RE CANADIAN UNION OF PUBLIC EMPLOYEES AND EXTENDICARE (CANADA) LTD. RE S.E.U., LOCAL 204 AFFILIATED WITH THE AFL-CIO-CLC	59
FANSHAWE PAINTING LTD. RE THE INT'L BROTHERHOOD OF PAINTERS AND ALLIED TRADES - LOCAL UNION 1783	25
GENERAL CONTRACTORS' SECTION OF THE TORONTO CONSTRUCTION ASSOCIATION RE INT'L UNION OF OPERATING ENGINEERS, LOCAL UNION #793 RE ONTARIO ERECTORS ASSOCIATION RE METROPOLI- TAN TORONTO SEWER AND WATERMAIN CONSTRUCTORS ASSOCIATION RE ONTARIO ROAD BUILDERS ASSOCIATION RE METROPOLITAN TORONTO ROAD BUILDERS' ASSOCIATION RE HEAVY CONSTRUCTION ASSOCIATION OF TORONTO RE TORONTO AND DISTRICT EXCAVATORS ASSOCIATION RE CRANE RENTAL ASSOCIATION OF ONTARIO	53
GENERAL CONTRACTORS' SECTION OF THE TORONTO CONSTRUCTION ASSOCIA- TION RE LOCAL 598 OF THE OPERATIVE PLASTERERS AND CEMENT MASONS INT'L ASSOCIATION OF THE UNITED STATES AND CANADA....	1
GRAHAM TRANSPORT LTD. RE GENERAL TRUCK DRIVERS UNION LOCAL 938	115
INDAL CANADA LTD., ALUMIPRIME DIVISION RE INT'L ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS LOCAL UNION 721	58
JOHNSON CONTROLS LTD. RE LOCAL 1966, INT'L BROTHERHOOD OF ELECTRICAL WORKERS, A.F.L. - C.I.O. & C.L.C.	57
JOSEPH BRANT MEMORIAL HOSPITAL OF THE BURLINGTON-NELSON HOSPITAL RE JOHN RENSO NOBELS RE CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL UNION NO. 1065	89
MACLEODS, A DIVISION OF MACLEOD STEDMAN LTD. RE RETAIL CLERKS INT'L ASSOCIATION	48
MCLEOD & SONS RE CHRISTIAN LABOUR ASSOCIATION OF CANADA RE INT'L BROTHERHOOD OF PAINTERS AND ALLIED TRADES, LOCAL UNION 1824	102

NATION-WIDE INTERIOR MAINTENANCE CO. LTD. RE SERVICE EMPLOYEES UNION, LOCAL 204, AFFILIATED WITH THE S.E.I.U. A.F. OF L., C.I.O., C.L.C.	86
ONTARIO COUNTY BOARD OF EDUCATION RE CANADIAN UNION OF PUBLIC EMPLOYEES LOCAL 218 AND ONTARIO COUNTY BOARD OF EDUCATION RE CANADIAN UNION OF PUBLIC EMPLOYEES LOCAL 218	30
R. W. S. DELIVERY SERVICES LTD. RE MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES, LOCAL 647 AFFILIATED WITH THE INT'L BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA	49
STEINBERG'S LTD. RE CANADIAN MERCHANDISING EMPLOYEES' UNION RE RETAIL AND FOOD EMPLOYEES LOCAL UNION 175, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC RE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 93 RE RETAIL CLERKS INT'L ASSOCIATION RE RETAIL CLERKS UNION, LOCAL NO. 486 CHARTERED BY THE RETAIL CLERKS INT'L ASSOCIATION	116
STEINBERG'S LTD. (MIRACLE MART DIVISION) RE RETAIL CLERKS UNION, LOCAL NO. 486 (CHARTERED BY THE RETAIL CLERKS INT'L ASSOCIATION) RE CANADIAN MERCHANDISING EMPLOYEES' UNION RE RETAIL CLERKS INT'L ASSOCIATION	18
STEVEN HARRIS AND LOCAL 200 UAW RE DON GEBBIE & MICHAEL LONG-MOORE	93
STRUDEX FIBRES LTD. RE AMALGAMATED CLOTHING WORKERS OF AMERICA RE GROUP OF EMPLOYEES	31
SUN PARLOUR GREENHOUSE GROWERS' Co-OPERATIVE LTD., ARMSTRONG PRODUCE Co. LTD., A.M.C. PRODUCE SHIPPERS INCORP., MASTRONARDI PRODUCE LTD., GARDEN ACRE SALES, AN AGENCY OF ONTARIO GREENHOUSE PRODUCERS MARKETING BOARD RE RETAIL AND FOOD EMPLOYEES LOCAL UNION 175, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC	94
TORONTO GENERAL HOSPITAL RE CANADIAN UNION OF OPERATING ENGINEERS RE CANADIAN UNION OF OPERATING ENGINEERS, LOCAL 101 RE CANADIAN UNION OF PUBLIC EMPLOYEES AND TORONTO GENERAL HOSPITAL RE CANADIAN UNION OF PUBLIC EMPLOYEES RE CANADIAN UNION OF OPERATING ENGINEERS - LOCAL 101 RE CSAO NATIONAL (INC.) RE CANADIAN UNION OF OPERATING ENGINEERS	33
400 UNIVERSITY AVENUE PROSPECT Co., RE CANADIAN UNION OF OPERATING ENGINEERS	110

VICTORIA HOSPITAL BOARD OF TRUSTEES OF THE CITY OF LONDON RE CIVIL SERVICE ASSOCIATION OF ONTARIO (INC.)	52
WELLS FARGO ARMoured EXPRESS, LTD. RE TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL 91 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WARE- HOUSE & HELPERS OF AMERICA	22
YORK COUNTY BOARD OF EDUCATION RE NORMAN JOHN FRIEND RE CANADIAN UNION OF PUBLIC EMPLOYEES, AND ITS LOCAL NO. 1196	65

INDEX OF CASES

ACCREDITATION - CONSTRUCTION INDUSTRY - PROCEDURE - FIRST APPLICATION.

THE GENERAL CONTRACTORS' SECTION OF THE TORONTO CONSTRUCTION ASSOCIATION v. LOCAL 598 OF THE OPERATIVE PLASTERERS AND CEMENT MASONS INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA 1

ACCREDITATION - PROCEDURE - FAILURE TO FILE SCHEDULE H PURSUANT TO S.87 OF BOARD'S RULES - APPOINTMENT AND AUTHORIZATION OF EXAMINERS TO INQUIRE.

THE GENERAL CONTRACTORS' SECTION OF THE TORONTO CONSTRUCTION ASSOCIATION v. THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL UNION #793 v. THE ONTARIO ERECTORS ASSOCIATION v. THE METROPOLITAN TORONTO SEWER AND WATERMAIN CONTRACTORS ASSOCIATION v. ONTARIO ROAD BUILDERS ASSOCIATION v. THE METROPOLITAN TORONTO ROAD BUILDERS' ASSOCIATION v. HEAVY CONSTRUCTION ASSOCIATION OF TORONTO v. TORONTO AND DISTRICT EXCAVATORS ASSOCIATION v. CRANE RENTAL ASSOCIATION OF ONTARIO 53

BARGAINING RIGHTS - REPRESENTATION VOTE - SUCCESSOR UNIONS - CERTIFICATION - BARGAINING UNIT - TRADE UNION - TRANSFER OF JURISDICTION - WHETHER SUCCESSOR ORGANIZATION A TRADE UNION - WHETHER REQUIREMENTS OF CHARTER FOLLOWED - WHETHER BARGAINING RIGHTS FOLLOW FROM PREDECESSOR LOCAL TO SUCCESSOR LOCAL - GEOGRAPHIC DESCRIPTION OF THE APPROPRIATE BARGAINING UNIT - WHETHER INCUMBENT CONTINUES TO BE AN INTERESTED PARTY - ENTITLEMENT TO PARTICIPATE IN A REPRESENTATION VOTE - WHETHER A DISPLACEMENT SITUATION - S.92(6) - "NO UNION OPTION" - BOARD DISCRETION - S.92(2)(1) - SPECIAL CIRCUMSTANCES - BOARD DISCRETION EXERCISED - REFUSAL TO RAISE A BAR.

CANADIAN MERCHANDISING EMPLOYEES' UNION v. STEINBERG'S LIMITED v. RETAIL AND FOOD EMPLOYEES LOCAL UNION 175, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC v. UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL UNION 93 v. RETAIL CLERKS INTERNATIONAL ASSOCIATION v. RETAIL CLERKS UNION, LOCAL NO. 486 CHARTERED BY THE RETAIL CLERKS INTERNATIONAL ASSOCIATION 116

BARGAINING RIGHTS - S.43(4) - TRADE UNION CEASES TO BE MEMBER OF COUNCIL OF TRADE UNIONS - BEFORE COLLECTIVE AGREEMENT CEASES TO OPERATE - WHETHER TRADE UNION CONTINUES TO HOLD BARGAINING RIGHTS - EFFECT OF CLAUSE IN AGREEMENT CAUSING BARGAINING RIGHTS TO BE TERMINATED.

OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION LOCAL 48 v. THE BOARD OF EDUCATION FOR THE CITY OF TORONTO v. INTERNATIONAL BROTHERHOOD OF PAINTERS AND ALLIED TRADES, LOCAL UNION 557 v. TORONTO BUILDING AND CONSTRUCTION TRADES COUNCIL

90

BARGAINING RIGHTS - SUCCESSOR UNIONS - JURISDICTION - PRACTICE - APPOINTMENT OF CONCILIATION OFFICER - S.53(2) - APPLICATION UNTIMELY - BOARD JURISDICTION - WHETHER CAN SET ASIDE DECISION OF MINISTER - EFFECT OF PRIOR BOARD DECISION UNDER S.54 - WHETHER BOARD WILL ACT AS APPELLATE TRIBUNAL WITH RESPECT TO A DECISION OF ANOTHER PANEL OF THE BOARD.

CHRISTIAN LABOUR ASSOCIATION OF CANADA v. McLEOD & SONS v. INTERNATIONAL BROTHERHOOD OF PAINTERS AND ALLIED TRADES, LOCAL UNION 1824

102

BARGAINING UNIT - CONSTRUCTION INDUSTRY - ONLY WINDOW INSTALLERS IN THE EMPLOY OF THE EMPLOYER ON APPLICATION DATE IN BOARD GEOGRAPHIC AREA - APPROPRIATE UNIT DETERMINED.

INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS LOCAL UNION 721 v. INDAL CANADA LIMITED, ALUMIPRIME DIVISION

58

BARGAINING UNIT - HOSPITAL TECHNICAL PERSONNEL - AGREEMENT OF THE PARTIES.

THE CIVIL SERVICE ASSOCIATION OF ONTARIO (INC.) v. VICTORIA HOSPITAL BOARD OF TRUSTEES OF THE CITY OF LONDON....

52

BARGAINING UNITS - PETITION - EFFECT OF AGREEMENT OF PARTIES - FAILURE OF WITNESS TO REMEMBER ACTUAL DATE OF ORIGINATION AND CIRCULATION - TIME LAPSE OF SIX MONTHS - REASONABLE TO FORGET DETAILS - REPRESENTATION VOTE ORDERED.

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 v. A. COPE & SONS LIMITED v. UNITED GLASS & CERAMIC WORKERS OF NORTH AMERICA (AFL-CIO-CLC) AND ITS LOCAL

224 v. LABORERS' INTERNATIONAL UNION OF NORTH AMERICA
LOCAL 837 v. TEAMSTERS LOCAL 879 AFFILIATED WITH THE
INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS
WAREHOUSEMEN & HELPERS OF AMERICA v. GROUP OF EM-
PLOYEES

77

BARGAINING UNIT - QUASI-PROFESSIONAL EMPLOYEES - WHETHER
INCLUDED IN BARGAINING UNIT.

BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION LOCAL
183, AFFILIATED SEIU, A.F.L., C.I.O., C.L.C. v. BEA-
CON HILL LODGES OF CANADA LIMITED

88

BARGAINING UNIT - S.6(2) - REFUSAL TO CARVE OUT A SEPARATE
CRAFT UNIT - ADMINISTRATIVE SEPARATION ALTHOUGH A FAC-
TOR NOT CONCLUSIVE - FRAGMENTATION OF EMPLOYERS ORGANIZA-
TION - PAST HISTORY OF COLLECTIVE BARGAINING OF EMPLOYER
- RELEVANT.

CANADIAN UNION OF OPERATING ENGINEERS v. TORONTO GENERAL
HOSPITAL v. CANADIAN UNION OF OPERATING ENGINEERS, LOCAL
101 v. CANADIAN UNION OF PUBLIC EMPLOYEES AND CANADIAN
UNION OF PUBLIC EMPLOYEES v. TORONTO GENERAL HOSPITAL v.
CANADIAN UNION OF OPERATING ENGINEERS - LOCAL 101 v.
CSAO NATIONAL (INC.) v. CANADIAN UNION OF OPERATING EN-
GINEERS

33

BARGAINING UNIT - TRADE UNION - BARGAINING RIGHTS - REPRESENTATION
VOTE - SUCCESSOR UNIONS - CERTIFICATION - TRANSFER OF JURISDICTION -
WHETHER SUCCESSOR ORGANIZATION A TRADE UNION - WHETHER REQUIREMENTS OF
CHARTER FOLLOWED - WHETHER BARGAINING RIGHTS FOLLOW FROM PREDE-
CESSOR LOCAL TO SUCCESSOR LOCAL - GEOGRAPHIC DESCRIPTION OF THE
APPROPRIATE BARGAINING UNIT - WHETHER INCUMBENT CONTINUES TO BE AN
INTERESTED PARTY - ENTITLEMENT TO PARTICIPATE IN A REPRESENTATION
VOTE - WHETHER A DISPLACEMENT SITUATION - S.92(6) - "NO UNION OPTION" -
BOARD DISCRETION - S.92(2)(1) - SPECIAL CIRCUMSTANCES - BOARD
DISCRETION EXERCISED - REFUSAL TO RAISE A BAR.

CANADIAN MERCHANDISING EMPLOYEES' UNION v. STEINBERG'S
LIMITED v. RETAIL AND FOOD EMPLOYEES LOCAL UNION 175,
AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH
AMERICA, AFL-CIO-CLC v. UNITED BROTHERHOOD OF CARPENTERS
AND JOINERS OF AMERICA, LOCAL UNION 93 v. RETAIL CLERKS
INTERNATIONAL ASSOCIATION v. RETAIL CLERKS UNION, LOCAL
NO. 486 CHARTERED BY THE RETAIL CLERKS INTERNATIONAL
ASSOCIATION

116

CERTIFICATION - BARGAINING UNIT - TRADE UNION - BARGAINING RIGHTS - REPRESENTATION VOTE - SUCCESSOR UNIONS - TRANSFER OF JURISDICTION - WHETHER SUCCESSOR ORGANIZATION A TRADE UNION - WHETHER REQUIREMENTS OF CHARTER FOLLOWED - WHETHER BARGAINING RIGHTS FOLLOW FROM PREDECESSOR LOCAL TO SUCCESSOR LOCAL - GEOGRAPHIC DESCRIPTION OF THE APPROPRIATE BARGAINING UNIT - WHETHER INCUMBENT CONTINUES TO BE AN INTERESTED PARTY - ENTITLEMENT TO PARTICIPATE IN A REPRESENTATION VOTE - WHETHER A DISPLACEMENT SITUATION - S.92(6) - 'NO UNION OPTION' - BOARD DISCRETION - S.92(2)(1) - SPECIAL CIRCUMSTANCES - BOARD DISCRETION EXERCISED - REFUSAL TO RAISE A BAR.

CANADIAN MERCHANDISING EMPLOYEES' UNION v. STEINBERG'S LIMITED v. RETAIL AND FOOD EMPLOYEES LOCAL UNION 175, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC v. UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 93 v. RETAIL CLERKS INTERNATIONAL ASSOCIATION v. RETAIL CLERKS UNION, LOCAL NO. 486 CHARTERED BY THE RETAIL CLERKS INTERNATIONAL ASSOCIATION

116

CHARGES - PRACTICE - 57(2) OF RULES - APPLICANT WITHDRAWS APPLICATION - REGISTRAR DIRECTED TO EXTEND TERMINAL DATE - INTERVENER TREATED AS APPLICANT - CHARGES OF NON-PAY ENTERTAINED AGAINST ORIGINAL APPLICANT ONCE IT INTERVENES NOTWITHSTANDING THE FILING OF FRESH FORM 8.

S.E.U., LOCAL 204, AFFILIATED S.E.I.U., A.F.L., C.I.O., C.L.C. v. EXTENDICARE (CANADA) LIMITED v. CANADIAN UNION OF PUBLIC EMPLOYEES

54

CHARGES - RELATED EMPLOYER - SALE OF A BUSINESS - PRACTICE - PERJURY CHARGE - WILL ONLY BE ENTERTAINED WHERE WILL SERVE A PURPOSE RELEVANT TO AN ISSUE - FAILURE TO GIVE INTERESTED PERSONS NOTICE - S.1(4) - ISSUE WILL NOT BE HEARD IN COURSE OF PROCEEDING WHEN RAISED AS AN AFTER-THOUGHT - S.55 - OPERATION OF SECTION MISCONCEIVED.

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL UNION 1687 v. EXCELLENCE ELECTRICAL CONSTRUCTION v. GROUP OF EMPLOYEES

44

COLLECTIVE AGREEMENT - TRADE UNION - WHERE TRADE UNIONS SURRENDERS CHARTER - EFFECT OF CREATION OF NEW LOCAL THAT ASSUMES POSITION OF EXTINGUISHED TRADE UNION - STATUS OF TRADE UNION SUBSEQUENTLY PUT UNDER TRUSTEESHIP - PARTY TO A COLLECTIVE AGREEMENT - RIGHT TO GIVE NOTICE TO BARGAIN.

STEINBERG'S LIMITED (MIRACLE MART DIVISION) v. RETAIL CLERKS UNION, LOCAL #486 (CHARTERED BY THE RETAIL CLERKS INTERNATIONAL ASSOCIATION) v. CANADIAN MERCHANDISING EM- PLOYEES' UNION v. RETAIL CLERKS INTERNATIONAL ASSOCIA- TION	18
---	----

CONSTRUCTION INDUSTRY - BARGAINING UNIT - ONLY WINDOW IN-
STALLERS IN THE EMPLOY OF THE EMPLOYER ON APPLICATION
DATE IN BOARD GEOGRAPHIC AREA - APPROPRIATE UNIT DE-
TERMINED.

INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS LOCAL UNION 721 v. INDAL CANADA LIMITED, ALUMIPRIME DIVISION	58
---	----

EMPLOYEES - S.1(3)(b) - QUASI PROFESSIONAL STAFF - NO REAL
INDEPENDENT AUTHORITY - NON-MANAGERIAL.

BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION LOCAL 183, AFFILIATED SEIU, A.F.L., C.I.O., C.L.C. v. BEACON HILL LODGES OF CANADA LIMITED	49
---	----

EMPLOYEES - TRADE UNION - S.11 - WHETHER EMPLOYED PRIMARILY
OR AS AN INCIDENT TO SECURITY GUARD FUNCTIONS - EFFECT
OF EMPLOYER HOLDING LICENSE UNDER THE PRIVATE INVESTI-
GATORS AND SECURITY GUARDS ACT, S.O. 1965, c.102 -
WHETHER TRADE UNION ADMITS OTHER EMPLOYEES.

TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL 91 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA v. WELLS FARGO ARMoured EXPRESS, LTD.	22
--	----

EVIDENCE - MEMBERSHIP - S.1(1)(j) - S.92(4) - CONSTITUTIONAL
RESTRICTIONS - PRESUMPTION - BOARD PRACTICE - ONUS -
WHETHER PROOF OF AN ESTABLISHED PAST PRACTICE - WHETHER
ELIGIBILITY REQUIREMENTS FOR MEMBERSHIP SATISFIED.

CANADIAN UNION OF OPERATING ENGINEERS v. 400 UNIVERSITY AVENUE PROSPECT COMPANY	110
--	-----

FAIR REPRESENTATION - S.79 - BOARD POLICY - INTERPRETATION
OF S.60 - DUTY OF BOARD - TO ASCERTAIN WHETHER CONDUCT
OF TRADE UNION IS ARBITRARY, DISCRIMINATORY OR IN BAD
FAITH - BOARD IS NOT PRIMARILY CONCERNED WITH THE MERITS
PRECIPITATING THE FILING OF THE COMPLAINT.

MRS. ODETTE VAN DER WOLF v. UNITED STEELWORKERS OF
AMERICA, DISTRICT NO. 6 v. ESSEX INTERNATIONAL OF
CANADA LIMITED

104

JURISDICTIONAL DISPUTE - S.81(8) - AN EXTRAORDINARY REMEDY
- EXERCISE OF CAUTION IN APPLICATION - BOARD POLICY IS
TO RETAIN STATUS QUO - S.81(17) - SINCE ONE PARTY SOUGHT
RELIEF IN ANOTHER FORUM - AFFIRMATIVE DETERMINATION MAY
UPSET STATUS QUO - INTERIM ORDER DENIED - AGENCY RELATION-
SHIP - FACTORS CONSIDERED.

ABE DICK MASONRY LIMITED v. 1) TRICON CONSTRUCTION COR-
PORATION; 2) LABOURERS INTERNATIONAL UNION OF NORTH
AMERICA, LOCAL 837; 3) UNITED BROTHERHOOD OF CARPENTERS
AND JOINERS OF AMERICA, LOCAL 18

74

JURISDICTION - PRACTICE - BARGAINING RIGHTS - SUCCESSOR UNIONS
- APPOINTMENT OF CONCILIATION OFFICER - S.53(2) - APPLI-
CATION UNTIMELY - BOARD JURISDICTION - WHETHER CAN SET
ASIDE DECISION OF MINISTER - EFFECT PRIOR BOARD DECI-
SION UNDER S.54 - WHETHER BOARD WILL ACT AS APPELLATE
TRIBUNAL WITH RESPECT TO A DECISION OF ANOTHER PANEL
OF THE BOARD.

CHRISTIAN LABOUR ASSOCIATION OF CANADA v. McLEOD &
SONS v. INTERNATIONAL BROTHERHOOD OF PAINTERS AND
ALLIED TRADES, LOCAL UNION 1824

102

MEMBERSHIP - EVIDENCE - S.1(1)(J) - S.92(4) - CONSTITUTIONAL
RESTRICTIONS - PRESUMPTION - BOARD PRACTICE - ONUS -
WHETHER PROOF OF AN ESTABLISHED PAST PRACTICE - WHETHER
ELIGIBILITY REQUIREMENTS FOR MEMBERSHIP SATISFIED.

CANADIAN UNION OF OPERATING ENGINEERS v. 400 UNIVERSITY
AVENUE PROSPECT COMPANY

110

PETITION - BARGAINING UNITS - EFFECT OF AGREEMENT OF
PARTIES - FAILURE OF WITNESS TO REMEMBER ACTUAL DATE
OF ORIGINATION AND CIRCULATION - TIME LAPSE OF SIX MONTHS
- REASONABLE TO FORGET DETAILS - REPRESENTATION VOTE OR-
DERED.

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 v.
A. COPE & SONS LIMITED v. UNITED GLASS & CERAMIC WORKERS
OF NORTH AMERICA (AFL-CIO-CLC) AND ITS LOCAL 224 v. LA-
BORERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL 837
v. TEAMSTERS LOCAL 879 AFFILIATED WITH THE INTERNATIONAL

BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA v. GROUP OF EMPLOYEES	77
PETITION - REPRESENTATION VOTE - PRACTICE - NO EFFECT ON POSITION OF APPLICANT - EMPLOYER INTERFERENCE - APPLICATION OF S.7(4).	
AMALGAMATED CLOTHING WORKERS OF AMERICA v. STRUDEX FIBRES LIMITED v. GROUP OF EMPLOYEES	31
PRACTICE - BARGAINING RIGHTS - SUCCESSOR UNIONS - JURISDICTION - APPOINTMENT OF CONCILIATION OFFICER - S.53(2) - APPLICATION UNTIMELY - BOARD JURISDICTION - WHETHER CAN SET ASIDE DECISION OF MINISTER - EFFECT OF PRIOR BOARD DECISION UNDER S.54 - WHETHER BOARD WILL ACT AS APPELLATE TRIBUNAL WITH RESPECT TO A DECISION OF ANOTHER PANEL OF THE BOARD.	
CHRISTIAN LABOUR ASSOCIATION OF CANADA v. McLEOD & SONS v. INTERNATIONAL BROTHERHOOD OF PAINTERS AND ALLIED TRADES, LOCAL UNION 1824	102
PRACTICE - CHARGES - 57(2) OF RULES - APPLICANT WITHDRAWS APPLICATION - REGISTRAR DIRECTED TO EXTEND TERMINAL DATE - INTERVENER TREATED AS APPLICANT - CHARGES OF NON-PAY ENTERTAINED AGAINST ORIGINAL APPLICANT ONCE IT INTERVENES - NOTWITHSTANDING THE FILING OF FRESH FORM 8.	
S.E.U., LOCAL 204, AFFILIATED S.E.I.U., A.F.L., C.I.O., C.L.C. v. EXTENDICATE (CANADA) LIMITED v. CANADIAN UNION OF PUBLIC EMPLOYEES	54
PRACTICE - CHARGES - S.47 OF RULES - AFTER DECISION RENDERED - OBLIGATION OF PARTY TO ACT PROMPTLY AND EXPEDITIOUSLY - TWO WEEK LAPSE SUBSEQUENT TO IMPROPER CONDUCT COMING TO ATTENTION OF PARTY - NOTICE FILED OF INTENTION TO FILE CHARGES DEEMED TARDY.	
SERVICE EMPLOYEES UNION, LOCAL 204, AFFILIATED WITH THE S.E.I.U. A.F. OF L., C.I.O., C.L.C. v. NATION-WIDE INTERIOR MAINTENANCE CO. LTD.	86
PRACTICE - CONSTRUCTION INDUSTRY - S.91(14) - A HEARING WILL BE HELD ONLY WHERE IT WILL SERVE A USEFUL PURPOSE - REASONS ADVANCED DID NOT MEET THIS STANDARD - REQUEST FOR HEARING DENIED.	

LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 493 v. CON-DIGN LIMITED v. GROUP OF EMPLOYEES	83
PRACTICE - EXAMINER'S INQUIRY - REPETITIVE REQUESTS FOR ADJOURNMENT OF INQUIRY - RESOLUTION OF CONTENTIOUS ISSUES NOT RESOLVED BY PARTIES - REVOCATION OF APPOINTMENT - MATTER REFERRED TO REGISTRAR.	
UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA v. BIRMINGHAM CONSTRUCTION LIMITED	72
PRACTICE - PROCEDURE - PRE-HEARING REPRESENTATION VOTE - BALLOT - TRADE UNION NOT A PARTY DISENTITLED TO HAVE NAME ON BALLOT.	
CANADIAN STEELWORKERS UNION OF CANADA v. ATLAS STEELS COMPANY, A DIVISION OF RIO ALGOM MINES LTD. v. UNITED STEELWORKERS OF AMERICA	50
PRACTICE - S.79 - WHERE BOARD DISMISSES APPLICATION ON REQUEST FOR LEAVE TO WITHDRAW - WHETHER <u>RES JUDICATA</u> APPLIES TO SUBSEQUENT APPLICATION - WHETHER INITIAL DISMISSAL BASED ON THE MERITS OF THE CASE.	
DON GEBBIE & MICHAEL LONGMOORE v. STEVEN HARRIS AND LOCAL 200, INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA	93
PRACTICE - S.95(2) - ASSERTION OF JURISDICTION AS A PRELIMINARY MATTER TO THE RESOLUTION OF AN ISSUE.	
THE ONTARIO COUNTY BOARD OF EDUCATION v. CANADIAN UNION OF PUBLIC EMPLOYEES LOCAL 218 AND CANADIAN UNION OF PUBLIC EMPLOYEES LOCAL 218 v. THE ONTARIO COUNTY BOARD OF EDUCATION	30
PROCEDURE - PERSON NOT A PARTY MAY BE AFFECTED BY BOARD DETERMINATION - PROCEEDINGS RELISTED - HEARING <u>DE NOVO</u> .	
R. W. S. DELIVERY SERVICES LIMITED v. MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES, LOCAL 647 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA	49

PROCEDURE - PRACTICE - PRE-HEARING REPRESENTATION VOTE -
BALLOT - TRADE UNION NOT A PARTY DISENTITLED TO HAVE
NAME ON BALLOT.

CANADIAN STEELWORKERS UNION OF CANADA v. ATLAS STEELS
COMPANY, A DIVISION OF RIO ALGOM MINES LTD. v. UNITED
STEELWORKERS OF AMERICA 50

RECONSIDERATION - S.95(1) - A BOARD DECISION IS NOT BASED
ON ONE ASPECT OF THE EVIDENCE - RATHER ALL THE EVI-
DENCE IN THE PARTICULAR CIRCUMSTANCES IS CONSIDERED
- REQUEST DENIED.

LOCAL 1966, INTERNATIONAL BROTHERHOOD OF ELECTRICAL
WORKERS, A.F.L. - C.I.O. & C.L.C. v. JOHNSON CONTROLS
LIMITED 57

RELATED EMPLOYER - SALE OF A BUSINESS - CHARGES - PRACTICE
- PERJURY CHARGE - WILL ONLY BE ENTERTAINED WHERE WILL
SERVE A PURPOSE RELEVANT TO AN ISSUE - FAILURE TO GIVE
INTERESTED PERSONS NOTICE - S.1(4) - ISSUE WILL NOT BE
HEARD IN COURSE OF PROCEEDING WHEN RAISED AS AN AFTER-
THOUGHT - S.55 - OPERATION OF SECTION MISCONCEIVED.

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL
UNION 1687 v. EXCELLENCE ELECTRICAL CONSTRUCTION v.
GROUP OF EMPLOYEES 44

RELATED EMPLOYER - SALE OF A BUSINESS - S.55(6) - "SALE"
- INTERPRETATION - FAMILY ENTERPRISE - ONE COMPANY
ASSUMES FUNCTIONS OF SISTER COMPANY - COMMON OWNER-
SHIP AND CONTROL - LIBERAL INTERPRETATION OF SALE -
EMPLOYEES PERFORM SAME FUNCTIONS AFTERWARD - NO IN-
TERMINGLING OF EMPLOYEES - S.55(6) - NO FINDING UNDER
S.1(4).

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793
v. DELLELCE CONSTRUCTION AND EQUIPMENT AND DELL CONSTRUC-
TION (SUDBURY) v. UNITED STEELWORKERS OF AMERICA 60

RELATED EMPLOYER - S.79 - DISCHARGE OF EMPLOYEES FOR UNION
ACTIVITY - SUSPICIOUS CIRCUMSTANCES - FAILURE OF EMPLOYER
TO PROVIDE A REASONABLE EXPLANATION - S.1(4) - RELATED
EMPLOYER - TWO CORPORATE VEHICLES - COMMON PRINCIPALS
- WHETHER ALL COMPANIES WHERE PRINCIPALS ARE ASSOCIATED
RELATED.

RETAIL AND FOOD EMPLOYEES LOCAL UNION 175, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC v. SUN PARLOUR GREENHOUSE GROWERS' CO-OPERATIVE LIMITED, ARMSTRONG PRODUCE COMPANY LIMITED, A.M.C. PRODUCE SHIPPERS INCORPORATED, MASTRONARDI PRODUCE LIMITED, GARDEN ACRE SALES, AN AGENCY OF ONTARIO GREENHOUSE PRODUCERS MARKETING BOARD

94

RELIGIOUS OBJECTION - PRACTICE - S.39(1) - WHERE PARTIES FAIL TO AGREE ON A CHARITABLE ORGANIZATION - BOARD WILL DESIGNATE - CRITERIA BOARD APPLIES - WHETHER CHARITABLE ORGANIZATION LOCATED IN THE AREA WHERE THE APPLICANT EMPLOYEE BOTH RESIDES AND WORKS.

JOHN RENSO NOBELS v. THE CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL UNION NO. 1065 v. JOSEPH BRANT MEMORIAL HOSPITAL OF THE BURLINGTON-NELSON HOSPITAL.....

89

RELIGIOUS OBJECTION - S.39(1) - ABSENT A MUTUALLY AGREED UPON CHARITABLE ORGANIZATION - THE BOARD WILL DESIGNATE.

EGBERT WITTEN v. THE CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 44, RECREATION DEPARTMENT v. THE CORPORATION OF THE TOWN OF BURLINGTON

73

RELIGIOUS OBJECTION - S.39(2) - TIMELINESS - INTERPRETATION OF THE WORDS "ONLY DURING THE LIFE OF SUCH COLLECTIVE AGREEMENT." - BOARD ASSERTS JURISDICTION.

NORMAN JOHN FRIEND v. THE CANADIAN UNION OF PUBLIC EMPLOYEES, AND ITS LOCAL NO. 1196 v. THE YORK COUNTY BOARD OF EDUCATION

65

REPRESENTATION VOTE - PETITION - PRACTICE - NO EFFECT ON POSITION OF APPLICANT - EMPLOYER INTERFERENCE - APPLICATION OF S.7(4).

AMALGAMATED CLOTHING WORKERS OF AMERICA v. STRUDEX FIBRES LIMITED v. GROUP OF EMPLOYEES

31

REPRESENTATION VOTE - SUCCESSOR UNIONS - CERTIFICATION - BARGAINING UNIT - TRADE UNION - BARGAINING RIGHTS - TRANSFER OF JURISDICTION - WHETHER SUCCESSOR ORGANIZATION A TRADE UNION - WHETHER REQUIREMENTS OF CHARTER FOLLOWED - WHETHER BARGAINING RIGHTS FOLLOW FROM PREDECESSOR LOCAL TO SUCCESSOR LOCAL - GEOGRAPHIC

DESCRIPTION OF THE APPROPRIATE BARGAINING UNIT - WHETHER INCUMBENT CONTINUES TO BE AN INTERESTED PARTY - ENTITLEMENT TO PARTICIPATE IN A REPRESENTATION VOTE - WHETHER A DISPLACEMENT SITUATION - S.92(6) - 'NO UNION OPTION' - BOARD DISCRETION - S.92(2)(1) - SPECIAL CIRCUMSTANCES - BOARD DISCRETION EXERCISED - REFUSAL TO RAISE A BAR.

CANADIAN MERCHANDISING EMPLOYEES' UNION v. STEINBERG'S LIMITED v. RETAIL AND FOOD EMPLOYEES LOCAL UNION 175, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC v. UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 93 v. RETAIL CLERKS INTERNATIONAL ASSOCIATION v. RETAIL CLERKS UNION, LOCAL NO. 486 CHARTERED BY THE RETAIL CLERKS INTERNATIONAL ASSOCIATION

116

SALE OF A BUSINESS - CHARGES - RELATED EMPLOYER - PRACTICE - PERJURY CHARGE - WILL ONLY BE ENTERTAINED WHERE WILL SERVE A PURPOSE RELEVANT TO AN ISSUE - FAILURE TO GIVE INTERESTED PERSONS NOTICE - S.1(4) - ISSUE WILL NOT BE HEARD IN COURSE OF PROCEEDING WHEN RAISED AS AN AFTER-THOUGHT - S.55 - OPERATION OF SECTION MISCONCEIVED.

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL UNION 1687 v. EXCELLENCE CONSTRUCTION v. GROUP OF EMPLOYEES

44

SALE OF A BUSINESS - RELATED EMPLOYER - S.55(6) - 'SALE' - INTERPRETATION - FAMILY ENTERPRISE - ONE COMPANY ASSUMES FUNCTIONS OF SISTER COMPANY - COMMON OWNERSHIP AND CONTROL - LIBERAL INTERPRETATION OF SALE - EMPLOYEES PERFORM SAME FUNCTIONS AFTERWARD - NO INTERMINGLING OF EMPLOYEES - S.55(6) - NO FINDING UNDER S.1(4).

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 v. DELLELCE CONSTRUCTION AND EQUIPMENT AND DELL CONSTRUCTION (SUDBURY) v. UNITED STEELWORKERS OF AMERICA.....

60

SALE OF A BUSINESS - TRADE UNION STATUS - TERMINATION - S.52(1) - TIMELINESS - CERTIFICATE GRANTED PARENT - AGREEMENT - TRADE UNION PARTY DESCRIBED "ON ITS OWN BEHALF AND ON BEHALF OF ITS LOCAL"... - WHETHER VOLUNTARY RECOGNITION OF LOCAL - SEPARATE ENTITIES - WHETHER APPLICATION FILED WITHIN YEAR - EFFECT OF AMALGAMATION OF MUNICIPALITIES ON BARGAINING RIGHTS - S.55(11) - FORMAL APPLICATION NEED NOT BE MADE.

H. M. ARNOTT, ET AL v. LOCAL 1219, CANADIAN UNION OF PUBLIC EMPLOYEES v. CANADIAN UNION OF PUBLIC EMPLOYEES v. THE CORPORATION OF THE TOWN OF MARKHAM	36
---	----

S.79 - PRACTICE - WHERE BOARD DISMISSES APPLICATION ON REQUEST FOR LEAVE TO WITHDRAW - WHETHER RES JUDICATA APPLIES TO SUBSEQUENT APPLICATION - WHETHER INITIAL DISMISSAL BASED ON THE MERITS OF THE CASE.

DON GEBBIE & MICHAEL LONGMOORE v. STEVEN HARRIS AND LOCAL 200, INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA	93
--	----

S.79 - RELATED EMPLOYER - DISCHARGE OF EMPLOYEES FOR UNION ACTIVITY - SUSPICIOUS CIRCUMSTANCES - FAILURE OF EMPLOYER TO PROVIDE A REASONABLE EXPLANATION - S.1(4) - RELATED EMPLOYER - TWO CORPORATE VEHICLES - COMMON PRINCIPALS - WHETHER ALL COMPANIES WHERE PRINCIPALS ARE ASSOCIATED RELATED.

RETAIL AND FOOD EMPLOYEES LOCAL UNION 175, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC v. SUN PARLOUR GREENHOUSE GROWERS' CO-OPERATIVE LIMITED, ARMSTRONG PRODUCE COMPANY LIMITED, A.M.C. PRODUCE SHIPPERS INCORPORATED, MASTRONARDI PRODUCE LIMITED, GARDEN ACRE SALES, AN AGENCY OF ONTARIO GREENHOUSE PRODUCERS MARKETING BOARD	94
---	----

SECTION 79 - DISCHARGE FOR UNION ACTIVITY - REAL MOTIVE - INCOMPETENCY TREATED AS EXCUSE FOR DISCHARGE.

THE INTERNATIONAL BROTHERHOOD OF PAINTERS AND ALLIED TRADES - LOCAL UNION 1783 v. FANSHAWE PAINTING LIMITED....	25
---	----

S.79 - FAIR REPRESENTATION - BOARD POLICY - INTERPRETATION OF S.60 - DUTY OF BOARD - TO ASCERTAIN WHETHER CONDUCT OF TRADE UNION IS ARBITRARY, DISCRIMINATORY OR IN BAD FAITH - BOARD IS NOT PRIMARILY CONCERNED WITH THE MERITS PRECIPITATING THE FILING OF THE COMPLAINANT.

MRS. ODETTE VAN DER WOLF v. UNITED STEELWORKERS OF AMERICA, DISTRICT NO. 6 v. ESSEX INTERNATIONAL OF CANADA LIMITED	104
---	-----

SECTION 79 - ONUS OF PROOF - FAILURE TO SATISFY BOARD OF BREACH OF PROVISIONS OF THE ACT - BOARD NOT REQUIRED TO DETERMINE JUST CAUSE FOR DISMISSAL - RECOURSE TO ANOTHER FORUM.

RETAIL CLERKS INTERNATIONAL ASSOCIATION v. MACLEODS,
A DIVISION OF MACLEOD STEDMAN LIMITED

48

SUCCESSOR UNIONS - JURISDICTION - PRACTICE - BARGAINING RIGHTS
- APPOINTMENT OF CONCILIATION OFFICER - S.53(2) - APPLI-
CATION UNTIMELY - BOARD JURISDICTION - WHETHER CAN SET
ASIDE DECISION OF MINISTER - EFFECT OF PRIOR BOARD DECI-
SION UNDER S.54 - WHETHER BOARD WILL ACT AS APPELLATE
TRIBUNAL WITH RESPECT TO A DECISION OF ANOTHER PANEL
OF THE BOARD.

CHRISTIAN LABOUR ASSOCIATION OF CANADA v. McLEOD & SONS
v. INTERNATIONAL BROTHERHOOD OF PAINTERS AND ALLIED
TRADES, LOCAL UNION 1824

102

SUCCESSOR UNIONS - TRADE UNION - BARGAINING RIGHTS - REPRE-
SENTATION VOTE - CERTIFICATION - BARGAINING UNIT - TRANS-
FER OF JURISDICTION - WHETHER SUCCESSOR ORGANIZATION
A TRADE UNION - WHETHER REQUIREMENTS OF CHARTER FOLLOWED
- WHETHER BARGAINING RIGHTS FOLLOW FROM PREDECESSOR LOCAL
TO SUCCESSOR LOCAL - GEOGRAPHIC DESCRIPTION OF THE AP-
PROPRIATE BARGAINING UNIT - WHETHER INCUMBENT CONTINUES
TO BE AN INTERESTED PARTY - ENTITLEMENT TO PARTICIPATE
IN A REPRESENTATION VOTE - WHETHER A DISPLACEMENT SITUA-
TION - S.92(6) - "NO UNION OPTION" - BOARD DISCRETION -
S.92(2)(1) - SPECIAL CIRCUMSTANCES - BOARD DISCRETION
EXERCISED - REFUSAL TO RAISE A BAR.

CANADIAN MERCHANDISING EMPLOYEES' UNION v. STEINBERG'S
LIMITED v. RETAIL AND FOOD EMPLOYEES LOCAL UNION 175,
AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH
AMERICA, AFL-CIO-CLC v. UNITED BROTHERHOOD OF CARPENTERS
AND JOINERS OF AMERICA, LOCAL UNION 93 v. RETAIL CLERKS
INTERNATIONAL ASSOCIATION v. RETAIL CLERKS UNION, LOCAL
NO. 486 CHARTERED BY THE RETAIL CLERKS INTERNATIONAL
ASSOCIATION

116

TERMINATION - SALE OF A BUSINESS - TRADE UNION STATUS -
S.52(1) - TIMELINESS - CERTIFICATE GRANTED PARENT -
AGREEMENT - TRADE UNION PARTY DESCRIBED "ON ITS OWN
BEHALF AND ON BEHALF OF ITS LOCAL"...-WHETHER VOL-
UNTARY RECOGNITION OF LOCAL - SEPARATE ENTITIES -
WHETHER APPLICATION FILED WITHIN YEAR - EFFECT OF
AMALGAMATION OF MUNICIPALITIES ON BARGAINING RIGHTS
- S.55(11) - FORMAL APPLICATION NEED NOT BE MADE.

H. M. ARNOTT, ET AL v. LOCAL 1219, CANADIAN UNION OF PUBLIC EMPLOYEES v. CANADIAN UNION OF PUBLIC EMPLOYEES v. THE CORPORATION OF THE TOWN OF MARKHAM	36
TERMINATION - S.49(2)(A) - PRACTICE - APPLICATION MADE WHEN TIME LIMITS REFERRED TO IN SECTION HAD NOT COMMENCED - APPLICATION MADE BY EMPLOYER - S.49 DOES NOT APPLY.	
GRAHAM TRANSPORT LIMITED v. GENERAL TRUCK DRIVERS UNION, LOCAL 938	115
TRADE UNION - COLLECTIVE AGREEMENT - WHERE TRADE UNION SURRENDERS CHARTER - EFFECT OF CREATION OF NEW LOCAL THAT ASSUMES POSITION OF EXTINCT TRADE UNION - STATUS OF TRADE UNION SUBSEQUENTLY PUT UNDER TRUSTEESHIP - PARTY TO A COLLECTIVE AGREEMENT - RIGHT TO GIVE NOTICE TO BARGAIN.	
STEINBERG'S LIMITED (MIRACLE MART DIVISION) v. RETAIL CLERKS UNION, LOCAL NO. 486 (CHARTERED BY THE RETAIL CLERKS INTERNATIONAL ASSOCIATION) v. CANADIAN MERCHANDISING EMPLOYEES' UNION v. RETAIL CLERKS INTERNATIONAL ASSOCIATION	18
TRADE UNION - EMPLOYEES - S.11 - WHETHER EMPLOYED PRIMARILY OR AS AN INCIDENT TO SECURITY GUARD FUNCTIONS - EFFECT OF EMPLOYER HOLDING LICENSE UNDER <u>THE PRIVATE INVESTIGATORS AND SECURITY GUARDS ACT</u> , S.O. 1965, c.102 - WHETHER TRADE UNION ADMITS OTHER EMPLOYEES.	
TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL 91 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA v. WELLS FARGO ARMoured EXPRESS, LTD.	22
TRADE UNION - PROCEDURE - TWO AFFILIATED TRADE UNIONS - APPLICATION WITH RESPECT TO SAME BARGAINING UNIT - TREATED AS ONE APPLICANT.	
CANADIAN UNION OF PUBLIC EMPLOYEES v. EXTENDICARE (CANADA) LTD. AND SERVICE EMPLOYEES UNION, LOCAL 204 AFFILIATED WITH THE AFL-CIO-CLC v. EXTENDICARE (CANADA) LTD.	59
TRADE UNION STATUS - TERMINATION - SALE OF A BUSINESS - S.52(1) - TIMELINESS - CERTIFICATE GRANTED PARENT - AGREEMENT - TRADE UNION PARTY DESCRIBED "ON ITS OWN BEHALF AND ON BEHALF OF ITS LOCAL"... - WHETHER VOLUNTARY RECOGNITION OF LOCAL - SEPARATE ENTITIES - WHETHER APPLICATION FILED	

WITHIN YEAR - EFFECT OF AMALGAMATED OF MUNICIPALITIES ON
BARGAINING RIGHTS - S.55(11) - FORMAL APPLICATION MEET NOT
BE MADE.

H. M. ARNOTT, ET AL v. LOCAL 1219, CANADIAN UNION OF
PUBLIC EMPLOYEES v. CANADIAN UNION OF PUBLIC EMPLOYEES
v. THE CORPORATION OF THE TOWN OF MARKHAM 36

TRADE UNION - SUCCESSOR UNIONS - BARGAINING RIGHTS - REPRESENTATION
VOTE - CERTIFICATION - BARGAINING UNIT -
TRANSFER OF JURISDICTION - WHETHER SUCCESSOR ORGANIZATION
A TRADE UNION - WHETHER REQUIREMENTS OF CHARTER
FOLLOWED - WHETHER BARGAINING RIGHTS FOLLOW FROM PRE-
DECESSOR LOCAL TO SUCCESSOR LOCAL - GEOGRAPHIC DESCRIPTION
OF THE APPROPRIATE BARGAINING UNIT - WHETHER INCUMBENT
CONTINUES TO BE AN INTERESTED PARTY - ENTITLEMENT TO PARTICIPATE
IN A REPRESENTATION VOTE - WHETHER A DISPLACEMENT SITUATION -
S.92(6) - "NO UNION OPTION" - BOARD DISCRETION - S.92(2)(1) -
SPECIAL CIRCUMSTANCES - BOARD DISCRETION EXERCISED - REFUSAL TO
RAISE A BAR.

CANADIAN MERCHANDISING EMPLOYEES' UNION v. STEINBERG'S
LIMITED v. RETAIL AND FOOD EMPLOYEES LOCAL UNION 175,
AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH
AMERICA, AFL-CIO-CLC v. UNITED BROTHERHOOD OF CARPENTERS
AND JOINERS OF AMERICA, LOCAL UNION 93 v. RETAIL CLERKS
INTERNATIONAL ASSOCIATION v. RETAIL CLERKS UNION, LOCAL
NO. 486 CHARTERED BY THE RETAIL CLERKS INTERNATIONAL
ASSOCIATION 116

304-71-R: THE GENERAL CONTRACTORS' SECTION OF THE TORONTO CONSTRUCTION ASSOCIATION (APPLICANT) v. LOCAL 598 OF THE OPERATIVE PLASTERERS AND CEMENT MASONS INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA (RESPONDENT).

BEFORE: G. W. REED, Q.C., CHAIRMAN, AND BOARD MEMBERS E. BOYER AND F. W. MURRAY.

DECISION OF THE BOARD: DECEMBER 30, 1971.

1. THIS IS THE FIRST APPLICATION FOR ACCREDITATION OF AN EMPLOYERS' ORGANIZATION UNDER THE CONSTRUCTION INDUSTRY PROVISIONS OF THE ACT. AS PART OF ITS APPLICATION, THE APPLICANT SUBMITTED A DECLARATION BY ITS DIRECTOR OF INDUSTRIAL RELATIONS THAT IT IS AN EMPLOYERS' ORGANIZATION THAT REPRESENTS EMPLOYERS WHO OPERATE BUSINESSES IN THE CONSTRUCTION INDUSTRY. THE RESPONDENT TRADE UNION IS A PARTY TO A COLLECTIVE AGREEMENT WITH THE GENERAL CONTRACTORS' SECTION OF THE TORONTO CONSTRUCTION ASSOCIATION DATED JULY 12, 1969, TO REMAIN IN EFFECT UNTIL APRIL 30, 1971. THAT AGREEMENT COVERS MORE THAN ONE EMPLOYER IN THE CONSTRUCTION INDUSTRY IN THE GEOGRAPHIC AREA AND THE SECTOR WHICH ARE THE SUBJECT OF THIS APPLICATION. THE BOARD THEREFORE FINDS THAT IT HAS JURISDICTION UNDER SECTION 113 OF THE ACT TO ENTER-TAIN THIS APPLICATION.

2. THE APPLICANT IN THIS CASE IS A CORPORATION. THE APPLICANT HAS FILED TRUE COPIES, CERTIFIED BY THE EXECUTIVE DIRECTOR OF THE CORPORATION, OF VARIOUS LETTERS PATENT AND SUPPLEMENTARY LETTERS PATENT. THESE TRUE COPIES INDICATE THAT THE PRESENT CORPORATION IS THE RESULT OF AN AMALGAMATION IN 1936 OF THE BUILDERS EXCHANGE OF THE CITY OF TORONTO AND THE TORONTO BUILDING AND CONSTRUCTION ASSOCIATION WHICH CORPORATIONS HAD PREVIOUSLY BEEN INCORPORATED IN 1892 AND 1933 RESPECTIVELY. THE CORPORATIONS WERE AMALGAMATED UNDER THE NAME OF THE BUILDERS EXCHANGE AND CONSTRUCTION ASSOCIATION OF TORONTO. SUBSEQUENTLY, IN 1944, THE NAME OF THIS CORPORATION WAS CHANGED TO TORONTO BUILDERS EXCHANGE. IN 1962 THAT NAME WAS AGAIN CHANGED BY SUPPLEMENTARY LETTERS PATENT TO THE TORONTO CONSTRUCTION ASSOCIATION. THE FILINGS OF THE EXECUTIVE DIRECTOR OF THE TORONTO CONSTRUCTION ASSOCIATION ALSO INDICATE THAT ON FEBRUARY 5, 1971, SUPPLEMENTARY LETTERS PATENT WERE ISSUED TO THE TORONTO CONSTRUCTION ASSOCIATION WHICH SUBSTANTIALLY ALTERED THE OBJECTS OF THE TORONTO CONSTRUCTION ASSOCIATION. THE APPLICANT ALSO FILED A TRUE COPY OF THE GENERAL BY-LAW OF THE TORONTO CONSTRUCTION ASSOCIATION AS ENACTED BY THE BOARD OF DIRECTORS OF THE ASSOCIATION ON THE 5TH DAY OF JANUARY 1971 AND RATIFIED BY THE MEMBERS OF THE ASSOCIATION ON JANUARY 14TH, 1971. ON THE BASIS OF ALL THE EVIDENCE THE BOARD IS SATISFIED THAT THE APPLICANT EMPLOYERS' ORGANIZATION IS AN EMPLOYERS' ORGANIZATION WITHIN THE MEANING OF SECTION 106(D) OF THE LABOUR RELATIONS ACT, R.S.O. 1970, CHAPTER 232, AND THAT IT IS A

PROPERLY CONSTITUTED ORGANIZATION FOR THE PURPOSES OF SECTION 115(3) OF THE ACT.

3. THE RESPONDENT TRADE UNION HAS FILED A REPLY AND LISTS OF EMPLOYERS IN THE UNIT OF EMPLOYERS.

4. IN SUPPORT OF ITS APPLICATION THE APPLICANT SUBMITTED 121 DOCUMENTS ENTITLED "EMPLOYER AUTHORIZATION". THESE DOCUMENTS AUTHORIZE THE GENERAL CONTRACTORS SECTION OF THE TORONTO CONSTRUCTION ASSOCIATION TO REPRESENT THE SIGNATORY EMPLOYER AS BARGAINING AGENT FOR THAT EMPLOYER AND ALL OTHER EMPLOYERS IN REGARD TO THE EMPLOYEES COVERED BY THE COLLECTIVE AGREEMENT WITH THE RESPONDENT IN THE TORONTO AREA IN THE INDUSTRIAL, COMMERCIAL AND INSTITUTIONAL SECTOR OF THE CONSTRUCTION INDUSTRY AND FURTHER VESTS ALL NECESSARY AUTHORITY IN SUCH ORGANIZATION TO ENABLE IT TO DISCHARGE THE RESPONSIBILITY OF AN ACCREDITED BARGAINING AGENT UNDER THE LABOUR RELATIONS ACT. THESE DOCUMENTS ARE SIGNED AND ALL BUT SIX HAVE BEEN DATED BY THE VARIOUS EMPLOYERS. THE APPLICANT ALSO SUBMITTED WITH ITS APPLICATION TWO LISTS OF EMPLOYERS, TOGETHER WITH THE ADDRESSES OF EACH EMPLOYER. THE FIRST OF THESE LISTS WAS CERTIFIED UNDER THE SEAL OF THE CORPORATION AS A LIST OF MEMBERS OF THE CORPORATION. THE OTHER LIST CONSISTED OF EMPLOYERS WHO AUTHORIZED THE APPLICANT TO ACT ON THEIR BEHALF, BUT WHO ARE NOT MEMBERS OF THE APPLICANT. AT THE HEARING IN THIS MATTER THE APPLICANT PROPOSED TO CALL EVIDENCE WITH RESPECT TO THE DATING OF SUCH DOCUMENTS. HOWEVER, IT IS NOT NECESSARY TO THE APPLICANT'S POSITION THAT SUCH DATES BE SUPPLIED. EXCLUDING THE SIX DOCUMENTS THAT ARE UNDATED, THE BOARD FINDS THAT THE REMAINING 115 DOCUMENTS, TOGETHER WITH THE LIST OF NAMES AND ADDRESSES, ARE SUFFICIENT TO COMPLY WITH THE REQUIREMENTS AS TO THE FORM OF EVIDENCE OF REPRESENTATION OF AN APPLICATION FOR ACCREDITATION AS REQUIRED BY SECTION 96 OF THE BOARD'S RULES OF PROCEDURE. CERTAIN OF THE DOCUMENTS FILED ON BEHALF OF INDIVIDUAL EMPLOYERS, ALTHOUGH IN THE NAME OF THE CORPORATE ENTITY, WERE NOT SIGNED UNDER THE SEAL OF THE CORPORATION. AT THE HEARING THE RESPONDENT TRADE UNION DID NOT CONTEST THE ACCEPTABILITY OF THESE DOCUMENTS AS EVIDENCE OF REPRESENTATION. THE BOARD THEREFORE PROPOSES TO ACCEPT THE EVIDENCE OF REPRESENTATION AS FILED. THE APPLICANT HAS ALSO FILED A COMPLETED FORM 62, DECLARATION CONCERNING REPRESENTATION DOCUMENTS, CONSTRUCTION INDUSTRY.

5. AS NOTED IN PARAGRAPH 4, THE EVIDENCE OF REPRESENTATION SUBMITTED BY THE APPLICANT SPECIFICALLY VESTS THE NECESSARY AUTHORITY TO ENABLE THE APPLICANT TO DISCHARGE THE RESPONSIBILITY OF AN ACCREDITED BARGAINING AGENT. IN ADDITION, WITH RESPECT TO THOSE EMPLOYERS THAT ARE MEMBERS OF THE APPLICANT, SECTION 42 OF THE GENERAL BY-LAW OF THE APPLICANT ASSOCIATION INDICATES THAT EACH MEMBER OF THE APPLICANT IS DEEMED TO HAVE AUTHORIZED THE MAKING OF AN APPLICATION FOR ACCREDITATION. THE BOARD IS SATISFIED THAT THE WRITTEN EVIDENCE OF REPRESENTATION VESTS APPROPRIATE AUTHORITY IN THE EMPLOYERS' ORGANIZATION TO EN-

ABLE IT TO DISCHARGE THE RESPONSIBILITIES OF AN ACCREDITED BARGAINING AGENT. FURTHER, THE BOARD IS SATISFIED THAT MEMBERSHIP IN THE CORPORATION VESTS APPROPRIATE AUTHORITY IN THE ORGANIZATION TO ENABLE IT TO DISCHARGE THE RESPONSIBILITIES OF AN ACCREDITED BARGAINING AGENT ON BEHALF OF ITS MEMBERS.

6. THE APPLICANT APPLIED FOR THE FOLLOWING UNIT OF EMPLOYERS:

"ALL EMPLOYERS OF EMPLOYEES ENGAGED IN CEMENT FINISHING WORK FOR WHOM THE RESPONDENT HAS BARGAINING RIGHTS IN METROPOLITAN TORONTO, THE COUNTIES OF YORK AND PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO IN THE INDUSTRIAL, COMMERCIAL AND INSTITUTIONAL SECTOR."

THE RESPONDENT SUBMITTED THAT THE FOLLOWING WAS THE APPROPRIATE UNIT OF EMPLOYERS:

"ALL EMPLOYERS OF EMPLOYEES ENGAGED IN CEMENT FINISHING WORK FOR WHOM THE RESPONDENT HAS BARGAINING RIGHTS IN METROPOLITAN TORONTO, THE COUNTIES OF YORK AND PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO WHO ARE GENERAL CONTRACTORS IN THE INDUSTRIAL, COMMERCIAL AND INSTITUTIONAL SECTOR."

THE RESPONDENT SUBSEQUENTLY AMENDED THE UNIT OF EMPLOYERS THAT IT SUBMITTED BY DELETING THE WORDS "WHO ARE GENERAL CONTRACTORS". THUS, THE UNIT OF EMPLOYERS SUGGESTED AS APPROPRIATE BY BOTH THE APPLICANT AND THE RESPONDENT IS IDENTICAL. THE GEOGRAPHIC AREA SUGGESTED AS APPROPRIATE IN THE UNIT OF EMPLOYERS IS THE AREA DESCRIBED IN THE COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT IN FORCE AT THE TIME WHEN THIS APPLICATION WAS MADE. AT THE HEARING IN THIS MATTER THE RESPONDENT SUGGESTED THAT THE APPROPRIATE SECTOR IN THE UNIT OF EMPLOYERS SHOULD REFLECT THE CURRENT BARGAINING PATTERN BETWEEN THE RESPONDENT AND VARIOUS CONTRACTORS WHO ARE BOUND BY AGREEMENTS WITH THE RESPONDENT. IT WAS REPRESENTED TO THE BOARD BY COUNSEL FOR THE RESPONDENT THAT WHEN WORK IS DONE BY ANY CONTRACTOR THAT HAS AN AGREEMENT WITH THE RESPONDENT IT IS DONE UNDER THE TERMS OF THAT COLLECTIVE AGREEMENT, REGARDLESS OF THE SECTOR OF THE CONSTRUCTION INDUSTRY IN WHICH THAT EMPLOYER IS WORKING. THUS, THE AGREEMENT MAY VERY WELL OPERATE, FOR INSTANCE, IN THE SEWER, TUNNELS AND WATER-

MAINS SECTOR IN THE CONSTRUCTION INDUSTRY. THE APPLICANT OPPOSED SUCH AN AMENDMENT TO THE APPROPRIATE UNIT OF EMPLOYERS. THE APPLICANT IS APPLYING FOR ONLY THE INDUSTRIAL, COMMERCIAL AND INSTITUTIONAL SECTOR AND REQUESTED THE BOARD TO LIMIT THE APPLICATION TO THAT SECTOR. IN THE CIRCUMSTANCES OF THIS CASE THE BOARD IS OF THE OPINION THAT IT SHOULD REFUSE TO EXERCISE ITS DISCRETION TO COMBINE OTHER SECTORS OR PARTS OF SECTORS WITH THE SECTOR OF THE CONSTRUCTION INDUSTRY APPLIED FOR BY THE APPLICANT.

7. ONE OF THE EMPLOYER INTERVENERS IN THIS MATTER, SYSTEMS INSTALLATIONS (CENTRAL) LIMITED, REQUESTED THAT IT BE EXCLUDED FROM THE UNIT OF EMPLOYERS ON THE GROUNDS THAT THEIR INSTALLATION CREWS ARE IN FACT COMPOSITE CREWS. THE EMPLOYER INTERVENER THEREFORE SUGGESTED THAT THE UNIT BE DESCRIBED IN TERMS OF EMPLOYEES EXCLUSIVELY ENGAGED IN CEMENT FINISHING WORK. HOWEVER, THE BOARD IS NOT PREPARED AT THIS TIME TO INCLUDE SUCH A QUALIFICATION IN A DESCRIPTION OF THE UNIT OF EMPLOYERS WHICH MAY LEAD TO PROBLEMS IN THE FUTURE, WHICH CANNOT PRESENTLY BE ANTICIPATED.

8. HAVING REGARD TO ALL THE ABOVE CONSIDERATIONS, THE BOARD FINDS THAT ALL EMPLOYERS OF EMPLOYEES ENGAGED IN CEMENT FINISHING WORK FOR WHOM THE RESPONDENT HAS BARGAINING RIGHTS IN METROPOLITAN TORONTO, THE COUNTIES OF YORK AND PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON, AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO IN THE INDUSTRIAL, COMMERCIAL AND INSTITUTIONAL SECTOR, CONSTITUTE AN APPROPRIATE UNIT OF EMPLOYERS FOR COLLECTIVE BARGAINING.

9. THE ACCREDITATION PROVISIONS OF THE LABOUR RELATIONS ACT REQUIRE THE BOARD TO MAKE SEVERAL VERY COMPLICATED DETERMINATIONS. THESE ARE SET OUT IN SUBSECTION 1 OF SECTION 115, WHICH READS AS FOLLOWS:

115.-(1) UPON AN APPLICATION FOR ACCREDITATION THE BOARD SHALL ASCERTAIN,

(A) THE NUMBER OF EMPLOYERS IN THE UNIT OF EMPLOYERS ON THE DATE OF THE MAKING OF THE APPLICATION WHO HAVE WITHIN ONE YEAR PRIOR TO SUCH DATE HAD EMPLOYEES IN THEIR EMPLOY FOR WHOM THE TRADE UNION OR COUNCIL OF TRADE UNIONS HAS BARGAINING RIGHTS IN THE GEOGRAPHIC AREA AND SECTOR DETERMINED BY THE BOARD TO BE APPROPRIATE;

(B) THE NUMBER OF EMPLOYERS IN CLAUSE (A) REPRESENTED BY THE EMPLOYERS' ORGANIZA-

TION ON THE DATE OF THE MAKING OF THE APPLICATION; AND

- (c) THE NUMBER OF EMPLOYEES OF EMPLOYERS IN CLAUSE (A) ON THE PAYROLL OF EACH SUCH EMPLOYER FOR THE WEEKLY PAYROLL PERIOD IMMEDIATELY PRECEDING THE DATE OF THE APPLICATION OR IF, IN THE OPINION OF THE BOARD, SUCH PAYROLL PERIOD IS UNSATISFACTORY FOR ANY ONE OR MORE OF THE EMPLOYERS IN CLAUSE (A), SUCH OTHER WEEKLY PAYROLL PERIOD FOR ANY ONE OR MORE OF THE SAID EMPLOYERS AS THE BOARD CONSIDERS ADVISABLE.

THE BOARD'S RULES OF PROCEDURE REQUIRE THE RESPONDENT TRADE UNION, IN AN APPLICATION FOR ACCREDITATION, TO FILE LISTS OF EMPLOYERS FOR WHOM IT HAS BARGAINING RIGHTS ON SCHEDULES "E", "F" AND "G" ATTACHED TO FORM 61. SCHEDULE "E" CONTAINS THE NAMES OF THOSE EMPLOYERS, IN THE UNIT OF EMPLOYERS, WHO HAVE HAD EMPLOYEES AFFECTED BY THE APPLICATION IN THE YEAR IMMEDIATELY PRECEDING THE DATE OF THE MAKING OF THE APPLICATION, THAT IS, THESE ARE EMPLOYERS WITH WHOM THE UNION IS ENTITLED TO BARGAIN AND WHO HAVE WORKED IN THE AREA AND SECTOR INVOLVED DURING THE YEAR PRIOR TO THE APPLICATION. SCHEDULE "F" SETS OUT THOSE EMPLOYERS WHO ARE IN THE UNIT OF EMPLOYERS BUT WHO HAVE NOT HAD EMPLOYEES AFFECTED BY THE APPLICATION IN THE ONE-YEAR PERIOD. SCHEDULES "E" AND "F" ARE THUS MUTUALLY EXCLUSIVE LISTS. SCHEDULE "G" LISTS EMPLOYERS WHO ARE IN THE UNIT AND THUS ON EITHER SCHEDULE "E" OR SCHEDULE "F", BUT FOR WHOM THE GEOGRAPHIC AREA IN THE AGREEMENT WITH THE UNION IS DIFFERENT FROM THAT SET OUT IN THE UNIT OF EMPLOYERS REQUESTED BY THE APPLICANT. THE PURPOSE OF SCHEDULE "G" IS TO GIVE THE BOARD AN INDICATION AS TO WHETHER OR NOT THE GEOGRAPHIC AREA APPROPRIATE FOR ACCREDITATION IS LIKELY TO BE A SIGNIFICANT PROBLEM, WHICH WAS NOT THE CASE IN THE INSTANT APPLICATION.

10. AS NOTED ABOVE, THE RESPONDENT TRADE UNION FILED A REPLY AND LISTS OF EMPLOYERS IN THE APPROPRIATE SCHEDULES. IN ADDITION, THE APPLICANT, IN THE MATERIALS FILED WITH ITS APPLICATION, LISTED EMPLOYERS WHO IT CLAIMED WERE INVOLVED WITH THESE PROCEEDINGS. THESE LISTS WERE NOT IDENTICAL. ACCORDINGLY, IMMEDIATELY AFTER THE TERMINAL DATE HAD PASSED, THE BOARD APPOINTED AN EXAMINER TO DETERMINE THE LIST OF EMPLOYERS IN THE UNIT OF EMPLOYERS. THE EXAMINER MET WITH THE PARTIES AND THE PARTIES AGREED TO A REVISED SCHEDULE "E" AND REVISED SCHEDULE "F". IN EFFECT, THESE REVISED SCHEDULES "E" AND "F" INCLUDED THE NAMES OF EVERY EMPLOYER WHO MIGHT HAVE AN INTEREST IN THIS APPLICATION, ACCORDING TO THE MATERIAL FILED WITH THE BOARD BY THE APPLICANT AND THE RESPONDENT. A PRELIMINARY LIST OF EMPLOYERS HAVING BEEN THUS ESTABLISHED, THE REGISTRAR WAS DIRECTED TO FIX AN EMPLOYER DATE UNDER SECTION 77 OF THE

BOARD'S RULES OF PROCEDURE AND TO SERVE NOTICE OF THIS APPLICATION UPON ALL THE EMPLOYERS ON THE REVISED SCHEDULES "E" AND "F". THE BOARD'S RULES OF PROCEDURE REQUIRE THAT EVERY EMPLOYER SERVED WITH NOTICE OF AN APPLICATION FOR ACCREDITATION SHALL FILE AN EMPLOYER INTERVENTION IN FORM 68 TOGETHER WITH AN ACCOMPANYING SCHEDULE "H" (LIST OF EMPLOYEES AFFECTED BY THE APPLICATION) BY THE EMPLOYER DATE. ON THAT DATE ONLY FIFTY-FIVE PER CENT OF THE EMPLOYERS SO NOTIFIED HAD MADE THE APPROPRIATE FILINGS. THE BOARD ACCORDINGLY APPOINTED A NUMBER OF EXAMINERS TO CONTACT THE REMAINING EMPLOYERS TO OBTAIN THE REQUIRED INFORMATION. BY THE DAY OF THE HEARING, ALL BUT SEVEN OF THE EMPLOYERS SERVED WITH NOTICE OF THIS APPLICATION HAD FILED AN EMPLOYER INTERVENTION WITH THE BOARD. THE BOARD HAS SUBSEQUENTLY RECEIVED SUFFICIENT EVIDENCE TO DEAL WITH THESE REMAINING EMPLOYERS.

11. IN ORDER TO MAKE THE DETERMINATION REQUIRED BY CLAUSE (A) OF SUBSECTION 1 OF SECTION 115 OF THE ACT, THE BOARD MUST FIRST DETERMINE THOSE EMPLOYERS IN THE UNIT OF EMPLOYERS ON THE DATE OF THE MAKING OF THE APPLICATION. THIS IS DETERMINED BY SECTION 114(2) WHICH STATES:

114.-(2) THE UNIT OF EMPLOYERS SHALL COMPRISE ALL EMPLOYERS AS DEFINED IN CLAUSE (C) OF SECTION 106 IN THE GEOGRAPHIC AREA AND SECTOR DETERMINED BY THE BOARD TO BE APPROPRIATE.

SECTION 106(c) REFERRED TO IN SECTION 114(2) READS AS FOLLOWS:

106.-(c) "EMPLOYER" MEANS A PERSON WHO OPERATES A BUSINESS IN THE CONSTRUCTION INDUSTRY, AND FOR PURPOSES OF AN APPLICATION FOR ACCREDITATION MEANS AN EMPLOYER FOR WHOSE EMPLOYEES A TRADE UNION OR COUNCIL OF TRADE UNIONS AFFECTED BY THE APPLICATION HAS BARGAINING RIGHTS IN A PARTICULAR GEOGRAPHIC AREA AND SECTOR OR AREAS OR SECTORS OR PARTS THEREOF;

TAKEN TOGETHER, SCHEDULE "E" AND SCHEDULE "F" COMPRISE THE COMPLETE LIST OF EMPLOYERS IN THE UNIT OF EMPLOYERS ON THE DATE OF THE MAKING OF THE APPLICATION, THAT IS, THOSE EMPLOYERS FOR WHOSE EMPLOYEES THE RESPONDENT HAS BARGAINING RIGHTS IN THE AREA AND SECTOR DETERMINED TO BE APPROPRIATE IN PARAGRAPH 8 ABOVE.

12. BASED ON THE MEETING HELD BY THE EXAMINER APPOINTED TO SETTLE THE LIST OF EMPLOYERS IN THE UNIT OF EMPLOYERS, THE REGISTRAR SERVED NOTICE OF THIS APPLICATION ON 169 EMPLOYERS WHO MIGHT BE AFFECTED BY THE APPLICATION. THE BOARD HAS NOW HAD SUFFICIENT MATERIALS

FILED WITH IT, INCLUDING CERTAIN AGREED SUBMISSIONS TO THE BOARD BY THE APPLICANT AND THE RESPONDENT DATED OCTOBER 6, 1971, CONCERNING THE INDIVIDUAL EMPLOYERS IN QUESTION TO MAKE THE VARIOUS DETERMINATIONS REQUIRED BY THE ACT. SOME OF THE EMPLOYERS SERVED WITH NOTICE OF THIS APPLICATION CAN BE REMOVED FROM THE LIST OF EMPLOYERS FOR CERTAIN PRELIMINARY REASONS. THUS, THE BOARD OF EDUCATION FOR THE CITY OF TORONTO, (E-73), BOTH IN ITS EMPLOYER INTERVENTION AND AT THE HEARING MADE REPRESENTATIONS TO THE BOARD THAT IT WAS NOT AN EMPLOYER IN THE CONSTRUCTION INDUSTRY WITHIN THE MEANING OF SECTION 1(1)(F). BOTH THE APPLICANT AND THE RESPONDENT HAVE ACCEPTED THE POSITION TAKEN BY THE BOARD OF EDUCATION FOR THE CITY OF TORONTO. THE BOARD THEREFORE FINDS THAT THE BOARD OF EDUCATION FOR THE CITY OF TORONTO IS NOT AN EMPLOYER IN THE CONSTRUCTION INDUSTRY AND HAS ACCORDINGLY BEEN DELETED FROM THE FINAL LIST OF EMPLOYERS IN THE UNIT OF EMPLOYERS. TWO OTHER EMPLOYERS WERE REMOVED BECAUSE THEY WERE MERELY DUPLICATIONS OF EMPLOYERS WHO PROPERLY APPEAR ELSEWHERE ON THE LIST OF EMPLOYERS. THUS, PLYFORM CONSTRUCTION LTD., (E-62), HAS BEEN REMOVED FROM THE LIST OF EMPLOYERS BECAUSE IT ALSO APPEARED AS E-65 ON THE REVISED SCHEDULE "E"; ALSO, SYSTEMS CONSTRUCTION (ONTARIO) LTD., (E-72), WAS REMOVED FROM THE LIST OF EMPLOYERS UPON THE ADDITION OF SYSTEMS INSTALLATIONS (CENTRAL) LIMITED (AS E-78) AS THE PROPER EMPLOYER CONCERNED WITH THIS APPLICATION. ALSO ADDED AS AN EMPLOYER TO THE LIST OF EMPLOYERS WAS W.A. McDOUGALL LIMITED (E-79). AN ADDITIONAL TWO EMPLOYERS WERE REMOVED FROM THE LIST OF EMPLOYERS BECAUSE THEY HAVE APPARENTLY GONE OUT OF BUSINESS. NOTICE OF THE APPLICATION, SENT TO THESE EMPLOYERS BY REGISTERED MAIL, WAS RETURNED UNOPENED. SUBSEQUENT ATTEMPTS TO PERSONALLY SERVE NOTICE OF THE APPLICATION BY BOARD OFFICERS WAS MET BY A FAILURE TO DETERMINE THE WHEREABOUTS OF ANY PERSONS CONNECTED WITH THESE COMPANIES. FURTHER, THE APPLICANT AND THE RESPONDENT HAVE AGREED THAT THE TWO EMPLOYERS IN QUESTION ARE OUT OF BUSINESS. THE BOARD THEREFORE FINDS THAT ANDERSON-SMYTHE LTD., (E-1), AND SECANT CONSTRUCTION (CENTRAL) LTD., (E-69), SHOULD BE EXCLUDED FROM THE LIST OF EMPLOYERS FOR THE PURPOSES OF THIS APPLICATION. (IN ANY EVENT, IT WOULD APPEAR THAT EVEN IF THESE EMPLOYERS WERE INCLUDED AS EMPLOYERS FOR THE PURPOSES OF MAKING THE DETERMINATIONS REQUIRED IN SECTION 115, THE REPRESENTATION POSITION OF THE APPLICANT WOULD NOT BE AFFECTED.)

13. AS A RESULT OF THE FILINGS BY INDIVIDUAL EMPLOYERS OF EMPLOYER INTERVENTIONS, IT APPEARED THAT SOME OF THE EMPLOYERS WHOSE NAMES APPEARED ON THE REVISED SCHEDULE "E" AND REVISED SCHEDULE "F" MAY NOT PROPERLY BE IN THE UNIT OF EMPLOYERS BECAUSE THE TRADE UNION IS NOT ENTITLED TO BARGAIN ON BEHALF OF THEIR EMPLOYEES IN THE AREA AND SECTOR DEFINED IN THE UNIT OF EMPLOYERS SET OUT IN PARAGRAPH 8 ABOVE. AFTER THE HEARING IN THIS MATTER, CERTAIN OF THE EMPLOYERS WHO HAD MADE THESE REPRESENTATIONS MADE REQUESTS TO THE BOARD TO CHANGE THEIR REPRESENTATIONS IN THIS REGARD. THE APPLICANT AND THE

RESPONDENT HAVE AGREED THAT THE BOARD SHOULD ACCEPT THESE CHANGES AND THESE EMPLOYERS HAVE BEEN INCLUDED IN THE UNIT OF EMPLOYERS. THE RESPONDENT TRADE UNION CHALLENGED THE REPRESENTATIONS WITH RESPECT TO ITS BARGAINING RIGHTS MADE BY TWO OF THE EMPLOYER INTERVENERS. THE RESPONDENT WAS GIVEN THE OPPORTUNITY TO FILE COLLECTIVE AGREEMENTS CONCERNING THESE TWO EMPLOYERS WITH THE BOARD. THE RESPONDENT SUBSEQUENT SUBMITTED A COLLECTIVE AGREEMENT CONCERNING THE EMPLOYEES OF WALLACE CONSTRUCTION COMPANY, (F-83), BUT HAS BEEN UNABLE TO PRODUCE A COLLECTIVE AGREEMENT RELATING TO OLYMPIA & YORK DEVELOPMENTS LIMITED, (E-59). THE BOARD THEREFORE FINDS THAT OLYMPIA & YORK DEVELOPMENTS LIMITED, (E-59), IS NOT AN EMPLOYER IN THE UNIT OF EMPLOYERS. WALLACE CONSTRUCTION COMPANY DID NOT APPEAR AT THE HEARING IN THIS MATTER TO MAKE ANY FURTHER REPRESENTATIONS IN RESPECT OF ITS CLAIM IN THE EMPLOYER INTERVENTION, ALTHOUGH IT HAD NOTICE THAT IT MIGHT BE AN EMPLOYER IN THE UNIT OF EMPLOYERS. THE BOARD THEREFORE FINDS THAT WALLACE CONSTRUCTION COMPANY IS AN EMPLOYER WITHIN THE UNIT OF EMPLOYERS. WITH RESPECT TO SIX OTHER EMPLOYERS APPEARING ON EITHER REVISED SCHEDULE "E" OR REVISED SCHEDULE "F" THE APPLICANT AND THE RESPONDENT HAVE ACCEPTED THE REPRESENTATIONS THAT THE RESPONDENT TRADE UNION IS NOT ENTITLED TO BARGAIN ON BEHALF OF THEIR EMPLOYEES IN THE AREA AND SECTOR DEFINED IN PARAGRAPH 8 ABOVE. THE BOARD THEREFORE FINDS THAT McMULLEN & WARNOCK LIMITED, (E-50); H. J. O'CONNELL LTD. (E-55); JACK GREEDY LIMITED, (F-42); GEORGE WIMPEY CANADA LTD., (F-87), AND EXPERT CONCRETE FLOOR LTD., (F-90), ARE NOT EMPLOYERS IN THE UNIT OF EMPLOYERS FOR THE PURPOSES OF THIS APPLICATION.

14. Two EMPLOYER INTERVENERS APPEARED AT THE HEARING TO MAKE ADDITIONAL REPRESENTATIONS IN SUPPORT OF THEIR REPRESENTATIONS WITH RESPECT TO EXCLUSION FROM THE LIST OF EMPLOYERS. THE ONTARIO HYDRO-ELECTRIC POWER COMMISSION, (E-51), TOOK THE POSITION THAT THOSE OF ITS EMPLOYEES FOR WHOM THE RESPONDENT WAS ENTITLED TO BARGAIN WERE EMPLOYED IN THE ELECTRICAL POWER SYSTEM SECTOR OF THE CONSTRUCTION INDUSTRY AND THAT AS AN EMPLOYER IN THE CONSTRUCTION INDUSTRY IT ONLY DID WORK IN THAT SECTOR. SINCE THIS APPLICATION DOES NOT RELATE TO THE ELECTRICAL POWER SYSTEMS SECTOR THE APPLICANT AND THE RESPONDENT AGREED THAT THE ONTARIO HYDRO-ELECTRIC POWER COMMISSION IS NOT AN EMPLOYER IN THE UNIT OF EMPLOYERS. THE OTHER EMPLOYER REQUESTING TO BE EXCLUDED FROM THE UNIT OF EMPLOYERS WAS SYSTEMS INSTALLATION (CENTRAL) LIMITED, (E-79). COUNSEL FOR THIS EMPLOYER ADMITTED THAT IT HAD A COLLECTIVE AGREEMENT WITH THE RESPONDENT CONCERNING EMPLOYEES IN THE AREA AND SECTOR THAT ARE THE SUBJECT OF THIS APPLICATION. THE REQUEST FOR EXCLUSION FROM THE UNIT OF EMPLOYERS WAS BASED ON THE CLAIM THAT THE EMPLOYER IN QUESTION HAS ORGANIZED ITS OPERATIONS USING MIXED OR COMPOSITE CREWS. A SIMILAR REQUEST WAS MADE IN ANOTHER APPLICATION FOR ACCREDITATION (SEE HAMILTON AND DISTRICT SHEET METAL CONTRACTORS INC. V. SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION LOCAL UNION 537, [1972] OLRB REP. P. 562 (SEPT.)). IN THAT DECISION THE BOARD NOTED THAT ALTHOUGH ACCREDITATION MAY INVOLVE SUCH AN EMPLOYER IN A HEAVY

ADMINISTRATIVE LOAD, HAVING REGARD TO THE PURPOSE AND INTENT OF THE ACCREDITATION LEGISLATION, THE BOARD WAS UNABLE TO FIND THIS A SUFFICIENT REASON FOR EXCLUDING THE EMPLOYER FROM THE LIST OF EMPLOYERS BOUND BY THE ACCREDITATION ORDER. INDEED, IT IS QUESTIONABLE WHETHER THE BOARD HAS THE JURISDICTION UNDER TO ACT TO EXCLUDE A SPECIFIC EMPLOYER WITHIN THE MEANING OF SECTION 106(c) WHO FALLS WITHIN THE AREA AND SECTOR DEEMED BY THE BOARD TO BE APPROPRIATE (SEE SECTION 114(2)).

15. HAVING DETERMINED THE EMPLOYERS IN THE UNIT OF EMPLOYERS ON THE DATE OF THE MAKING OF THE APPLICATION, THE BOARD MUST THEN DETERMINE WHICH OF THOSE EMPLOYERS HAVE HAD EMPLOYEES IN THEIR EMPLOY WITHIN ONE YEAR PRIOR TO THE DATE OF THE MAKING OF THE APPLICATION FOR WHOM THE TRADE UNION HAS BARGAINING RIGHTS IN THE GEOGRAPHIC AREA AND THE SECTOR DETERMINED BY THE BOARD TO BE APPROPRIATE. THE EMPLOYERS FOUND BY THE BOARD TO HAVE HAD EMPLOYEES IN THE ONE-YEAR PERIOD COMPRISED THE EMPLOYERS WHO PROPERLY MAKE UP SCHEDULE "E". AS A RESULT OF THE FILINGS BY THE INDIVIDUAL EMPLOYERS ON FORM 68, THIRTEEN OF THE EMPLOYERS ORIGINALLY ON REVISED SCHEDULE "E" WERE TRANSFERRED TO SCHEDULE "F" BECAUSE THEY HAD NO EMPLOYEES IN THE ONE-YEAR PERIOD PRIOR TO APRIL 15, 1971, THE DATE OF THE MAKING OF THE APPLICATION. ON THE OTHER HAND, NINETEEN OF THE EMPLOYERS ORIGINALLY ON REVISED SCHEDULE "F" WERE TRANSFERRED TO SCHEDULE "E" BECAUSE THEIR FILINGS INDICATED THAT THEY HAD EMPLOYEES IN THE ONE-YEAR PERIOD PRIOR TO APRIL 15, 1971.

16. IN ACCORDANCE WITH THE FOREGOING CONSIDERATIONS, THE BOARD HAS COMPILED A FINAL SCHEDULE "E" AND A FINAL SCHEDULE "F". THE BOARD HAS TAKEN AS THE CORRECT NAME OF EACH INDIVIDUAL EMPLOYER THE NAME STATED AS THE CORRECT NAME IN THE FORM 68 FILED BY EACH EMPLOYER. THE FINAL SCHEDULE "E" AND FINAL SCHEDULE "F" ARE AS FOLLOWS:

FINAL SCHEDULE "E"

- | | |
|---|-------|
| 1. ANGLO CONSTRUCTION COMPANY | (F-2) |
| 2. ARMoured FLOOR (1961) LTD. | (E-2) |
| 3. ASSOCIATED FORMING CONTRACTORS LTD. | (E-3) |
| 4. BALL BROTHERS LIMITED | (E-4) |
| 5. BELMONT CONCRETE FINISHING CO. LIMITED | (E-5) |
| 6. BENNETT-PRATT LIMITED | (F-5) |

7. BIRD CONSTRUCTION COMPANY LTD.	(E-6)
8. H.L. BLACHFORD LIMITED	(E-7)
9. BRAMALEA GENERAL CONTRACTING (PEEL) LIMITED	(E-8)
10. CADET CONSTRUCTION LIMITED	(F-9)
11. CAMSTON LIMITED	(E-9)
12. CANADA SQUARE CORPORATION LIMITED	(E-10)
13. E. G. M. CAPE & COMPANY LIMITED	(E-12)
14. PAUL CARRUTHERS CONSTRUCTION LIMITED	(E-13)
15. CENTENNIAL CONCRETE FINISH FLOOR	(E-14)
16. CHEMELLO CONSTRUCTION LTD.	(E-15)
17. P. R. CONNOLLY CONSTRUCTION LIMITED	(E-16)
18. CONTINENTAL CONCRETE FINISHING COMPANY	(E-18)
19. DAFOE METALLICRETE FLOOR CO. LTD.	(E-20)
20. DALTON ENGINEERING & CONSTRUCTION COMPANY LIMITED	(F-22)
21. DIPLOCK DURABLE FLOOR CO. LTD.	(E-21)
22. DIRECT FORMING LTD.	(E-22)
23. DOLMAR CONSTRUCTION LIMITED	(F-25)
24. DOLPHIN CONCRETE FINISHING CO.	(F-26)
25. DOMINION MEMBRANE TORONTO LIMITED	(F-27)
26. DROGE CONSTRUCTION LIMITED	(E-23)
27. DUROM (ONTARIO) LTD.	(E-24)
28. DYNAMIC FLOOR COMPANY	(E-25)
29. EASTERN CONSTRUCTION COMPANY LIMITED	(E-26)
30. ELLIS-DON LIMITED	(E-27)

31. ETHERINGTON CONSTRUCTION LIMITED	(E-29)
32. FAHRMANN CONSTRUCTION LIMITED	(E-30)
33. FRANKEL FORMWORK COMPANY LIMITED	(E-33)
34. FRAN-KIRI FORMING LIMITED	(F-35)
35. THE FRID CONSTRUCTION COMPANY LIMITED	(E-34)
36. HARBRIDGE & CROSS LIMITED	(E-36)
37. HARRISON-MUIR LIMITED	(E-37)
38. HEFFERNAN FLOOR & WALL PRODUCTS LIMITED	(E-38)
39. IAN JOHNSTON FLOORS LIMITED	(E-39)
40. INTERNORTH CONSTRUCTION CO.	(F-45)
41. JANIN BUILDING AND CIVIL WORKS LTD.	(E-40)
42. WM. H. JOHNSTON CONSTRUCTION LTD.	(F-49)
43. KALMAN FLOOR COMPANY (CANADA) LTD.	(F-50)
44. JOHN KERR CONSTRUCTION LIMITED	(E-41)
45. THE JOHN L. KLUG CORPORATION	(E-42)
46. KONVEY CONSTRUCTION COMPANY LIMITED	(E-43)
47. LEADER MASONRY & FORMING LTD.	(E-45)
48. LISGAR CONSTRUCTION CO. DIV. OF UNITED SHELTERS LTD.	(F-56)
49. THE LUNAR COMPANY LIMITED	(F-57)
50. LYNCH-RICHARDS CONSTRUCTION LIMITED	(F-58)
51. MAPLE FLOOR FINISHERS LTD.	(E-44)
52. V. K. MASON CONSTRUCTION LTD.	(E-46)
53. ROBERT MCALPINE LTD.	(E-47)
54. W. A. McDUGALL LTD.	(E-79)

55. MILNE & NICHOLLS LIMITED	(E-52)
56. MITCHELL CONSTRUCTION COMPANY (CANADA)	(E-53)
57. MOLLENHAUER LTD.	(F-64)
58. OMEGA MARBLE CO. LIMITED	(E-56)
59. THE ORLANDO REALTY CORPORATION LIMITED	(E-58)
60. PANAMA CONCRETE LIMITED	(E-60)
61. WM. PARKER CONSTRUCTION LIMITED	(F-68)
62. PATRAM CONSTRUCTION LIMITED	(F-70)
63. PIGOTT CONSTRUCTION COMPANY LIMITED	(E-61)
64. PLYFORM CONSTRUCTION COMPANY LIMITED	(E-65)
65. K. H. PRESTON CONSTRUCTION LIMITED	(E-63)
66. REDFERN CONSTRUCTION COMPANY LIMITED	(E-64)
67. RICHARD & B. A. RYAN LIMITED	(F-76)
68. ROCKWIN CONSTRUCTION LTD.	(E-67)
69. W. A. STEPHENSON CONSTRUCTION CO. LIMITED	(E-70)
70. STRUCTURAL FORMWORK LIMITED	(E-71)
71. SYSTEMS INSTALLATIONS (CENTRAL) LIMITED	(E-78)
72. TAYLOR WOODROW OF CANADA LIMITED	(F-78)
73. UNITED FLOOR COMPANY LTD.	(E-74)
74. VANBOTS CONSTRUCTION LTD. & CO.	(E-75)
75. VANGUARD CONCRETE FINISHING LIMITED	(E-76)
76. VARAMAE CONSTRUCTION LIMITED	(E-77)

FINAL SCHEDULE "F"

ALLY CONSTRUCTION CO. LTD.	F-1
AYKROYD CONSTRUCTION (1965) LIMITED	F-3
BECO EQUIPMENT LIMITED	F-4
ED. BRODERS CONSTRUCTION LTD.	F-6
G. E. BUCKINGHAM CONTRACTING LIMITED	F-7
CADCONEX ENTERPRISES LIMITED	F-8
T. CAMPBELL CONSTRUCTION LIMITED	F-10
CAMBELL-YUSTIN LIMITED	F-11
CANRON LIMITED EASTERN STRUCTURAL DIVISION	E-11
THE CARTER CONSTRUCTION COMPANY LIMITED	F-12
CASEY-HEWSON CONSTRUCTION LTD.	F-13
CEMENTATION COMPANY CANADA LIMITED	F-14
CLOKE CONSTRUCTION COMPANY LIMITED	F-15
CODECO LIMITED	F-16
CONASON CONSTRUCTION LTD.	F-18
CONRAD PAINTING LIMITED	E-1
COOPER CONSTRUCTION COMPANY (EASTERN) LIMITED	E-19
D. R. CRAWFORD CONSTRUCTION LIMITED	F-21
DICKIE CONSTRUCTION COMPANY LIMITED	F-23
LOUIS DONOLO INCORPORATED	F-28
DOYLE HINTON LIMITED	F-29
EAGLEWOOD CONSTRUCTION CO. LIMITED	F-30
EICHLEAY CORPORATION INTERNATIONAL	F-31
EMERY CONCRETE FLOOR COMPANY LIMITED	E-28
DAVID FARN CONSTRUCTION LIMITED	F-32
FASSEL CONSTRUCTION CO. LIMITED	E-31
FLYING FORMING LTD.	F-33
THE FOUNDATION COMPANY OF CANADA LIMITED	E-32
FRANCIS HANKIN & CO. LIMITED	F-34
W. G. GALLAGHER CONSTRUCTION LIMITED	E-35
GARDINER-WIGHTON CO. LIMITED	F-36
GILLANDERS CONSTRUCTION LTD.	F-37
JOHN GOBA LTD.	F-38
GOTHIC CONSTRUCTION CO.	F-39
GRAHAM AND SIBBETT CO. LIMITED	F-40
GRECO CONSTRUCTION CO.	F-41
JACK GREEDY LIMITED	F-42
M. J. GUTHRIE CONSTRUCTION LTD.	F-43
WILLIAM HARTLEY CONSTRUCTION LIMITED	F-44
HURLEY-GREGORIS CONSTRUCTION	F-91
ROBERT D. IRNSIDE AND ASSOCIATE LIMITED	F-46
IVEY-DREGER CONSTRUCTION LIMITED	F-47
THE JACKSON-LEWIS COMPANY LIMITED	F-48
KAMRUS CONSTRUCTION LIMITED	F-51
KEVLIN CONSTRUCTION CO. LTD.	F-52

R. G. KIRBY & SONS LIMITED	F-53
KOVACS CONSTRUCTION CO. LTD.	F-54
LAING CONSTRUCTION AND EQUIPMENT LIMITED	F-55
T. F. LYNCH CONSTRUCTION LIMITED	F-59
MAGIL CONSTRUCTION LTD.	F-60
E. S. MARTIN CONSTRUCTION LIMITED	F-61
W. A. McDUGALL CONSTRUCTION MANAGEMENT LTD.	E-48
FINLEY W. McLACHLAN CONSTRUCTION CO. LIMITED	E-49
McMULLEN & WARNOCK LIMITED	E-50
McNAMARA CONSTRUCTION OF ONTARIO LTD.	F-62
MELIA CONSTRUCTION LIMITED	F-63
MEL-RON CONSTRUCTION LIMITED	E-51
NICK'S CONCRETE FLOOR CUTTING	E-54
H. J. O'CONNELL LTD.	E-55
ONTARIO FORMWORK LIMITED	F-65
ONTARIO ROCK DRILLERS LIMITED	F-66
OSTVIK CONSTRUCTION LIMITED	F-67
FRANZ PATELLA INC.	F-69
PERINI LIMITED	F-71
A. PETERSONS LTD.	F-72
JOHN RAE & SONS CONSTRUCTION LIMITED	F-74
JAMES A. RICE LTD.	F-75
ROBERTSON-YATES CORPORATION LIMITED	E-66
SCHWENGER CONSTRUCTION LIMITED	E-68
C. A. SMITH CONTRACTING LIMITED	F-77
SYSTEMS CONSTRUCTION (ONTARIO) LIMITED	E-72
TOWER CONSTRUCTION	F-79
TURNCREST CONSTRUCTION LIMITED	F-80
UMACS CONSTRUCTION LIMITED	F-81
VICTORIA INDUSTRIAL PARK	F-92
MICHAEL WADE CONSTRUCTION COMPANY LIMITED	F-82
WALLACE CONSTRUCTION CO.	F-83
J. WATT & CO. (BUILDERS) LIMITED	F-84
WEST YORK CONSTRUCTION LTD.	F-85
JOHN WHEELWRIGHT LIMITED	F-86
GEORGE WIMPEY CANADA LTD.	F-87
YOUNG & APPERLEY LTD.	F-88
ZORGE CONSTRUCTION COMPANY LIMITED	F-89

THE BOARD FINDS THAT THE NUMBER OF EMPLOYERS ON SCHEDULE "E" TOTALLING SEVENTY-SIX IS THE NUMBER OF EMPLOYERS TO BE ASCERTAINED BY THE BOARD UNDER SECTION 115(1)(A) OF THE ACT.

17. THE NATURE OF THE WRITTEN EVIDENCE OF REPRESENTATION OF EMPLOYERS BY THE APPLICANT WAS DESCRIBED IN PARAGRAPHS 4 AND 5, SUPRA. ON THE BASIS OF ALL THE EVIDENCE BEFORE US, THE BOARD FINDS THAT ON THE DATE OF THE MAKING OF THE APPLICATION THE APPLICANT REPRESENTED

FIFTY OF THE SEVENTY-SIX EMPLOYERS ASCERTAINED AS THE NUMBER OF EMPLOYERS UNDER SECTION 115(1)(A) OF THE ACT. THE FIFTY EMPLOYERS SO REPRESENTED BY THE APPLICANT IS THE NUMBER OF EMPLOYERS TO BE ASCERTAINED BY THE BOARD UNDER SECTION 115(1)(B) OF THE ACT. ACCORDINGLY, THE BOARD IS SATISFIED THAT A MAJORITY OF THE EMPLOYERS IN THE UNIT OF EMPLOYERS ARE REPRESENTED BY THE APPLICANT EMPLOYEES' ORGANIZATION.

18. THE ENTITLEMENT OF AN EMPLOYERS' ORGANIZATION TO ACCREDITATION IS BASED ON A "DOUBLE-MAJORITY". WE HAVE NOW DEALT WITH THE FIRST OF THE MAJORITIES THAT AN APPLICANT MUST OBTAIN, A MAJORITY OF EMPLOYERS IN THE UNIT OF EMPLOYERS. WE NOW TURN TO THE MATTER OF WHETHER THESE EMPLOYERS REPRESENT A MAJORITY OF THE EMPLOYEES INVOLVED. BY SECTION 115(1)(C) THE BOARD MUST ASCERTAIN THE FOLLOWING:

THE NUMBER OF EMPLOYEES OF EMPLOYERS IN CLAUSE (A) ON THE PAYROLL OF EACH SUCH EMPLOYER FOR THE WEEKLY PAYROLL PERIOD IMMEDIATELY PRECEDING THE DATE OF THE APPLICATION OR IF, IN THE OPINION OF THE BOARD, SUCH PAYROLL PERIOD IS UNSATISFACTORY FOR ANY ONE OR MORE OF THE EMPLOYERS IN CLAUSE (A), SUCH OTHER WEEKLY PAYROLL PERIOD FOR ANY ONE OR MORE OF THE SAID EMPLOYERS AS THE BOARD CONSIDERS ADVISABLE.

EACH OF THE SEVENTY-SIX EMPLOYERS ON SCHEDULE "E" SET OUT IN PARAGRAPH 16 ABOVE HAS SUBMITTED WITH HIS EMPLOYER INTERVENTION A SCHEDULE "H" CONTAINING THE NAMES OF HIS EMPLOYEES, IF ANY, AFFECTED BY THE APPLICATION. BY SECTION 115(1)(C) THE RELEVANT WEEKLY PAYROLL PERIOD IS PRIMA FACIE THE WEEK IMMEDIATELY PRECEDING APRIL 15, 1971, THE DATE OF THE MAKING OF THIS APPLICATION. PARAGRAPH 5 OF FORM 68, EMPLOYER INTERVENTION, READS AS FOLLOWS:

5. THE INTERVENER STATES THAT THE NUMBER OF EMPLOYEES ON THE PAYROLL FOR THE WEEKLY PAYROLL PERIOD IMMEDIATELY PRECEDING THE DATE OF THE APPLICATION
 - *IS REPRESENTATIVE OF THE NUMBER OF EMPLOYEES
 - *IS NOT AFFECTED BY THIS APPLICATION NORMALLY EMPLOYED BY THE INTERVENER. (WHERE THE NUMBER IS NOT REPRESENTATIVE, GIVE DETAILS)

*STRIKE OUT IF NOT APPLICABLE.

THIS, OF COURSE, ALLOWS THE INDIVIDUAL EMPLOYER TO MAKE REPRESENTATIONS TO THE BOARD CONCERNING A MORE APPROPRIATE WEEKLY PAYROLL PERIOD. IN ITS

DECISION DATED JULY 26, 1971 THE BOARD DECIDED THAT ONLY EMPLOYERS WHO HAD GIVEN THE DETAILS REQUIRED BY THAT FORM WOULD HAVE THEIR REPRESENTATIONS ENTERTAINED BY THE BOARD. ACCORDINGLY, IN THE SAME DECISION THE BOARD APPOINTED TWO EXAMINERS TO OBTAIN ADDITIONAL FILINGS FROM TWENTY EMPLOYERS CONCERNING THE REPRESENTATIVE WEEKLY PAYROLL PERIOD. ONE OF THESE EMPLOYERS SUBSEQUENTLY WITHDREW THEIR REPRESENTATIONS RESPECTING THE REPRESENTATIVE WEEKLY PAYROLL PERIOD. THREE OTHER EMPLOYERS HAVE HAD NO EMPLOYEES WITHIN THE YEAR PERIOD PRIOR TO THE APPLICATION, AND ARE THUS ON SCHEDULE "F", AND THEREFORE IRRELEVANT FOR THE PRESENT PURPOSES. THE SIXTEEN REMAINING EMPLOYERS EACH FILED WITH THE BOARD'S EXAMINERS VARIOUS LISTS OF EMPLOYEES FOR DIFFERENT WEEKLY PAYROLL PERIODS. HAVING REGARD TO THIS MATERIAL, THE BOARD IS OF THE OPINION THAT THE WEEKLY PAYROLL PERIOD IMMEDIATELY PRECEDING THE DATE OF THIS APPLICATION IS UNSATISFACTORY FOR THESE SIXTEEN EMPLOYERS. THE BOARD IS OF THE OPINION THAT THE APPROPRIATE PAYROLL PERIOD FOR EACH OF THESE EMPLOYERS SHOULD BE THE PERIOD WITH THE NUMBER OF EMPLOYEES CLOSEST TO THE AVERAGE OF THE THREE LISTS FILED BY EACH EMPLOYER. THE BOARD CONSIDERS IT ADVISABLE TO USE THE FOLLOWING WEEKLY PERIODS FOR THE FOLLOWING EMPLOYERS:

ANGLO CONSTRUCTION COMPANY

WEEKLY PAYROLL PERIOD IMMEDIATELY PRECEDING
OCTOBER 16, 1970

BIRD CONSTRUCTION COMPANY LIMITED

WEEKLY PAYROLL PERIOD IMMEDIATELY PRECEDING
DECEMBER 11, 1970

CAMSTON LIMITED

WEEKLY PAYROLL PERIOD IMMEDIATELY PRECEDING
MARCH 2, 1971

E.G.M. CAPE & COMPANY LTD.

WEEKLY PAYROLL PERIOD IMMEDIATELY PRECEDING
JULY 14, 1970

P. R. CONNOLLY CONSTRUCTION LIMITED

WEEKLY PAYROLL PERIOD IMMEDIATELY PRECEDING
MARCH 12, 1971

THE FRID CONSTRUCTION COMPANY LIMITED

WEEKLY PAYROLL PERIOD IMMEDIATELY PRECEDING
APRIL 24, 1970

HARBIDGE & CROSS LIMITED

WEEKLY PAYROLL PERIOD IMMEDIATELY PRECEDING
MARCH 15, 1971

HEFFERNAN FLOOR & WALL PRODUCTS LIMITED

WEEKLY PAYROLL PERIOD IMMEDIATELY PRECEDING
JANUARY 30, 1971

JANIN BUILDING AND CIVIL WORKS LTD.

WEEKLY PAYROLL PERIOD IMMEDIATELY PRECEDING
SEPTEMBER 26, 1970

JOHN KEAR CONSTRUCTION LIMITED

WEEKLY PAYROLL PERIOD IMMEDIATELY PRECEDING
JUNE 20, 1970

THE JOHN L. KLUG CORPORATION

WEEKLY PAYROLL PERIOD IMMEDIATELY PRECEDING
JUNE 2, 1970

MITCHELL CONSTRUCTION COMPANY (CANADA)

WEEKLY PAYROLL PERIOD IMMEDIATELY PRECEDING
FEBRUARY 8, 1971

MOLLENHAUER LTD.

WEEKLY PAYROLL PERIOD IMMEDIATELY PRECEDING
FEBRUARY 23, 1971

PIGOTT CONSTRUCTION COMPANY LIMITED

WEEKLY PAYROLL PERIOD IMMEDIATELY PRECEDING
APRIL 6, 1971

SYSTEMS INSTALLATIONS (CENTRAL) LIMITED

WEEKLY PAYROLL PERIOD IMMEDIATELY PRECEDING
AUGUST 28, 1970

VANGUARD CONCRETE FINISHING LIMITED

WEEKLY PAYROLL PERIOD IMMEDIATELY PRECEDING
MARCH 21, 1971

FOR THE REMAINING SIXTY EMPLOYERS THE BOARD IS OF THE OPINION THAT THE WEEKLY PAYROLL PERIOD IMMEDIATELY PRECEDING APRIL 15, 1971 IS SATISFACTORY.

19. ONE OF THE EMPLOYERS, DOLPHIN CONCRETE FINISHING CO. HAS REFUSED TO FILE A SCHEDULE "H" IN THIS MATTER AND HAS REFUSED TO CO-OPERATE WITH THE BOARD'S EXAMINER IN OBTAINING THE INFORMATION REQUIRED ON SCHEDULE "H". THE APPLICANT AND THE RESPONDENT HAVE AGREED THAT AN APPROPRIATE NUMBER OF EMPLOYEES FOR THIS EMPLOYER IN THE RELEVANT WEEKLY PAYROLL PERIOD SHOULD BE ONE. SINCE THIS EMPLOYER PROVIDES NO EVIDENCE OF A CONTRARY NATURE, THE BOARD ACCEPTS THE REPRESENTATIONS OF THE APPLI-

CANT AND THE RESPONDENT THAT THE APPROPRIATE NUMBER OF EMPLOYEES EMPLOYED BY THIS EMPLOYER IN THE WEEKLY PAYROLL PERIOD IMMEDIATELY PRECEDING APRIL 15, 1971 IS ONE EMPLOYEE.

20. AT THE HEARING IN THIS MATTER BOTH THE APPLICANT AND THE RESPONDENT WERE CONCERNED THAT THE OVERALL FILINGS BY VARIOUS EMPLOYERS IN SCHEDULE "H" DID NOT ACCURATELY REFLECT THE NUMBER OF EMPLOYEES WORKING IN THE AREA AND SECTOR WHICH ARE THE SUBJECT MATTER OF THIS APPLICATION. BOTH THE APPLICANT AND THE RESPONDENT HAVE SUBSEQUENTLY WITHDRAWN ANY OBJECTIONS THEY MAY HAVE HAD IN THIS REGARD. ON THE BASIS OF ALL THE EVIDENCE BEFORE IT AND IN ACCORDANCE WITH THE FOREGOING CONSIDERATIONS, THE BOARD FINDS THAT THERE WERE 321 EMPLOYEES AFFECTED BY THE APPLICATION. THE 321 EMPLOYEES IS THE NUMBER OF EMPLOYEES TO BE ASCERTAINED BY THE BOARD UNDER SECTION 115(1)(c) OF THE ACT.

21. THE BOARD FURTHER FINDS THAT THE FIFTY EMPLOYERS REPRESENTED BY THE APPLICANT EMPLOYERS' ORGANIZATION EMPLOYED A TOTAL OF 233 EMPLOYEES IN THE WEEKLY PAYROLL PERIODS DETERMINED IN PARAGRAPH 18 AS THE PAYROLL PERIOD FOR THE PURPOSES OF SECTION 115(1)(c) OF THE ACT. THE BOARD IS THEREFORE SATISFIED THAT THE MAJORITY OF EMPLOYERS REPRESENTED BY THE APPLICANT EMPLOYED A MAJORITY OF EMPLOYEES AS ASCERTAINED IN ACCORDANCE WITH THE PROVISIONS OF SECTION 115(1)(c) OF THE ACT.

22. HAVING REGARD TO ALL THE ABOVE FINDINGS, A CERTIFICATE OF ACCREDITATION WILL ISSUE TO THE APPLICANT FOR THE UNIT OF EMPLOYERS FOUND TO BE THE APPROPRIATE UNIT OF EMPLOYERS IN PARAGRAPH 8 AND, IN ACCORDANCE WITH THE PROVISIONS OF SECTION 115(2) OF THE ACT, FOR SUCH OTHER EMPLOYERS FOR WHOSE EMPLOYEES THE RESPONDENT MAY AFTER APRIL 15, 1971 OBTAIN BARGAINING RIGHTS THROUGH CERTIFICATION OR VOLUNTARY RECOGNITION IN THE GEOGRAPHIC AREA AND SECTOR SET OUT IN THE APPROPRIATE UNIT OF EMPLOYERS.

776-71-M: STEINBERG'S LIMITED (MIRACLE MART DIVISION) (EMPLOYER) V. RETAIL CLERKS UNION, LOCAL NO. 486 (CHARTERED BY THE RETAIL CLERKS INTERNATIONAL ASSOCIATION) (TRADE UNION) V. CANADIAN MERCHANDISING EMPLOYEES' UNION (INTERVENER #1) V. RETAIL CLERKS INTERNATIONAL ASSOCIATION (INTERVENER #2).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS O. HODGES AND W. H. WIGHTMAN.

APPEARANCES AT THE HEARING: MICHAEL MCKEOWN FOR THE EMPLOYER; IAN SCOTT, BARRY H. BAILY AND DAVID A. WADE FOR THE TRADE UNION AND INTERVENER #2; DENIS J. POWER, THOMAS REES, KEN POWELL AND JAMES GARDNER FOR INTERVENER #1.

DECISION OF THE BOARD:

JANUARY 4, 1972.

1. COUNSEL FOR THE EMPLOYER (HEREINAFTER REFERRED TO AS STEINBERG'S) AND COUNSEL FOR THE TRADE UNION (HEREINAFTER REFERRED TO AS LOCAL 486) AGREED TO THE CANADIAN MERCHANDISING EMPLOYEES' UNION (HEREINAFTER REFERRED TO AS CMEU) AND THE RETAIL CLERKS INTERNATIONAL ASSOCIATION (HEREINAFTER REFERRED TO AS THE ASSOCIATION) BEING ADDED AS PARTIES TO THESE PROCEEDINGS.

2. ON MAY 21, 1971, LOCAL 486 MADE A REQUEST TO THE MINISTER FOR THE APPOINTMENT OF A CONCILIATION OFFICER UNDER SECTION 15 OF THE ACT. IN SUPPORT OF THE REQUEST LOCAL 486 FILED A COPY OF A COLLECTIVE AGREEMENT BETWEEN STEINBERG'S AND LOCAL 486 DATED NOVEMBER 10, 1969, WHICH AGREEMENT WAS TO REMAIN IN EFFECT UNTIL APRIL 6, 1971. LOCAL 486 GAVE WRITTEN NOTICE TO STEINBERG'S OF ITS DESIRE TO BARGAIN ON FEBRUARY 8, 1971. NO OBJECTION TO THE REQUEST WAS RECEIVED FROM STEINBERG'S. ON JUNE 4, 1971 THE PARTIES WERE ADVISED THAT THE MINISTER HAD APPOINTED A CONCILIATION OFFICER.

3. BY LETTER DATED JUNE 23, 1971 ADDRESSED TO THE MINISTER, THE SOLICITORS FOR CMEU CHALLENGED THE STATUS OF LOCAL 486 ALLEGING THAT IT WAS NOT A VALID AND SUBSISTING TRADE UNION AT THE TIME THE MINISTER MADE HIS APPOINTMENT OF A CONCILIATION OFFICER. IN LIGHT OF THE ABOVE ALLEGATION, THE MINISTER HAS REFERRED TO THE BOARD PURSUANT TO SECTION 96(1) THE QUESTION AS TO WHETHER HE HAD THE AUTHORITY UNDER THE LABOUR RELATIONS ACT TO APPOINT A CONCILIATION OFFICER IN THIS MATTER. THE RELEVANT EVIDENCE ADDUCED AT THE HEARING ON THE REFERENCE IS OUTLINED BELOW.

4. THE ASSOCIATION WAS CERTIFIED BY THE BOARD ON NOVEMBER 1, 1966 AS BARGAINING AGENT FOR ALL EMPLOYEES OF STEINBERG'S AT OTTAWA, SAVE AND EXCEPT SECTION HEADS, PERSONS ABOVE THE RANK OF SECTION HEAD, SHOPPERS, GUARDS AND OFFICE STAFF. SUBSEQUENT TO THE ISSUANCE OF THE BOARD'S CERTIFICATE STEINBERG'S ENTERED INTO A COLLECTIVE AGREEMENT WITH LOCAL 486. THERE IS NO EVIDENCE BEFORE THE BOARD AS TO THE SCOPE AND DURATION OF THE FIRST AGREEMENT. THE SAME PARTIES, NAMELY STEINBERG'S AND LOCAL 486, ENTERED INTO A SECOND COLLECTIVE AGREEMENT ON NOVEMBER 10, 1969. IT IS THIS AGREEMENT WHICH WAS FILED BY LOCAL 486 IN SUPPORT OF THE REQUEST TO THE MINISTER FOR CONCILIATION SERVICES. BY THE RECOGNITION CLAUSE OF THE SAID AGREEMENT STEINBERG'S RECOGNIZES LOCAL 486 AS BARGAINING AGENT FOR ALL EMPLOYEES, INCLUDING HOSTESSES, IN THE COUNTIES OF RENFREW, LANARK, LEEDS, CARLETON, GRENVILLE, DUNDAS, STOREMOT, RUSSELL, PRESCOTT AND GLENGARRY IN THE PROVINCE OF ONTARIO, SAVE AND EXCEPT GROUP MANAGERS, PERSONS ABOVE THE RANK OF GROUP MANAGER, SECURITY OFFICERS AND SHOPPERS.

5. THE ASSOCIATION ISSUED A CHARTER TO LOCAL 486 ON DECEMBER 27, 1960, REPLACING A CHARTER ISSUED TO THE SAME LOCAL ON OCTOBER 1,

1948. THE GEOGRAPHIC JURISDICTION OF LOCAL 486 AS SET OUT IN THE CHARTER OF DECEMBER 2, 1960 IS CONFINED TO MONTREAL. LOCAL 486R WAS CHARTERED BY THE ASSOCIATION ON OCTOBER 1, 1965 WITH JURISDICTION COVERING GREATER MONTREAL AND VICINITY. THE ASSOCIATION CHARTERED LOCAL 486W ON JUNE 22, 1966. ITS GEOGRAPHIC JURISDICTION ALSO COVERED GREATER MONTREAL AND VICINITY.

6. ACCORDING TO A LETTER FILED IN EVIDENCE DATED AUGUST 5, 1966 ADDRESSED TO THE SECRETARY-TREASURER OF LOCAL 486 FROM THE INTERNATIONAL PRESIDENT OF THE ASSOCIATION, THOSE MEMBERS OF LOCAL 206 (WHICH LOCAL HAS JURISDICTION IN ONTARIO) WORKING IN THE COUNTIES OF PRESCOTT, GLENGARRY, STORMONT, RUSSELL, DUNDAS, CARLETON, GRENVILLE, LEEDS, LANARK, FRONTENAC AND RENFREW IN THE PROVINCE OF ONTARIO VOTED TO AFFILIATE WITH LOCAL 486. THE SAID ACTION WAS APPROVED BY THE EXECUTIVE BOARD AND MEMBERSHIP OF LOCAL 206 AT A REGULAR MONTHLY MEETING HELD ON MARCH 23, 1966 AND LOCAL 486 VOTED TO ACCEPT INTO MEMBERSHIP THE SAID MEMBERS OF LOCAL 206. FURTHER, BY THE LETTER OF AUGUST 5, 1966 THE ASSOCIATION OFFICIALLY EXTENDED THE GEOGRAPHICAL JURISDICTION OF LOCAL 486 TO INCLUDE THE ABOVE NAMED COUNTIES IN EASTERN ONTARIO.

7. ACCORDING TO A LETTER FILED IN EVIDENCE DATED FEBRUARY 27, 1968 ADDRESSED TO THE PRESIDENT OF LOCAL 486R FROM THE INTERNATIONAL SECRETARY-TREASURER OF THE ASSOCIATION, ON OR ABOUT MARCH 1, 1968, LOCAL 486R MERGED WITH LOCAL 486. THE FORMER LOCAL SURRENDERED ITS CHARTER AND THEREUPON CEASED TO EXIST. ACCORDING TO A LETTER FILED IN EVIDENCE DATED MARCH 28, 1968 ADDRESSED TO THE SECRETARY-TREASURER OF LOCAL 486 FROM THE INTERNATIONAL PRESIDENT OF THE ASSOCIATION, THE NECESSARY STEPS WERE TAKEN BY LOCAL 486W, WITH JURISDICTION IN GREATER MONTREAL AND VICINITY, AND LOCAL 486, WITH JURISDICTION IN MONTREAL AND EASTERN ONTARIO, TO MERGE THE FORMER LOCAL WITH THE LATTER LOCAL. THIS MERGER WAS APPROVED BY THE ASSOCIATION. ACCORDING TO THE LETTER OF MARCH 28, 1968, THE MERGER OF LOCAL 486W AND LOCAL 486 BECAME EFFECTIVE ON APRIL 1, 1968. LOCAL 486W AND LOCAL 486 SURRENDERED THEIR CHARTERS WHEN THE MERGER CAME INTO EFFECT AND A NEW CHARTER WAS ISSUED ON APRIL 1, 1968 IN THE NAME OF COMMERCE EMPLOYEES' UNION LOCAL 500. THE EVIDENCE OF THOMAS REES, THE PRESIDENT OF CMEU WHO WAS FORMERLY AN INTERNATIONAL REPRESENTATIVE OF THE ASSOCIATION, IS CORROBORATIVE OF THAT CONTAINED IN THE ABOVE LETTERS.

8. THE GEOGRAPHIC JURISDICTION OF THE NEW LOCAL 500 WAS DESCRIBED IN THE CHARTER AS BEING MONTREAL. THE LETTER OF THE INTERNATIONAL PRESIDENT OF THE ASSOCIATION DATED MARCH 28, 1968, HOWEVER, SPECIFIED THAT THE GEOGRAPHICAL JURISDICTION OF LOCAL 500 WAS TO ENCOMPASS MONTREAL AND EASTERN ONTARIO, I.E. THE COUNTIES OF RENFREW, FRONTENAC, LANARK, LEEDS, CARLETON, GRENVILLE, RUSSELL, DUNDAS, STORMONT, PRESCOTT AND GLENGARRY. THERE IS NOTHING IN THE EVIDENCE TO SUGGEST THAT THE ASSOCIATION EXCEEDED ITS AUTHORITY WITH RESPECT TO THE ABOVE DESCRIBED MERGERS OR THE GEOGRAPHIC JURISDICTION OF THE LOCAL UNIONS INVOLVED.

WE WOULD MENTION THAT FROM APRIL 1, 1968 UNTIL DECEMBER 1, 1970 LOCAL 500 ACTIVELY EXERCISED ITS JURISDICTION OVER THIS AREA.

9. THE LETTER OF MARCH 28, 1968 AND A DOCUMENT WHICH WAS IDENTIFIED AS AN EXTRACT FROM MINUTES OF A MEETING OF LOCAL 486 HELD ON MARCH 20, 1968 WOULD APPEAR ON THEIR FACE TO INDICATE THAT ON APRIL 1, 1968 THERE WAS ONLY A CHANGE IN THE NAME OF LOCAL 486 TO LOCAL 500. HOWEVER, WHEN LOCAL 486W MERGED WITH LOCAL 486 ON APRIL 1, 1968 BOTH LOCAL 486W AND LOCAL 486 SURRENDERED THEIR CHARTERS. FURTHER, ACTING ON AN APPLICATION MADE IN ACCORDANCE WITH THE PROVISIONS OF ITS CONSTITUTION, THE ASSOCIATION ON THE SAME DATE ISSUED A NEW CHARTER IN THE NAME OF LOCAL 500. BASED ON THE EVIDENCE BEFORE US, WE ARE SATISFIED THAT THERE WAS NOT MERELY A CHANGE OF NAME FROM LOCAL 486 TO LOCAL 500 THAT TOOK PLACE ON APRIL 1, 1968. WE FIND RATHER THAT LOCAL 500 WAS AN ENTIRELY NEW ENTITY WHICH SUCCEEDED TO THE JURISDICTION FORMERLY HELD BY THE MERGED LOCALS 486W AND 486. WE FURTHER FIND ON THE EVIDENCE THAT WHEN LOCAL 486W AND LOCAL 486 SURRENDERED THEIR CHARTERS AT THE TIME OF THEIR MERGER AND THE COMING INTO BEING OF LOCAL 500, LOCAL 486W AND LOCAL 486 WENT OUT OF EXISTENCE. THAT IS TO SAY, THERE CEASED TO BE ANY ENTITIES KNOWN AS LOCAL 486W AND LOCAL 486.

10. THE EMPLOYEES OF STEINBERG'S IN EASTERN ONTARIO, INCLUDING OTTAWA, WHO FROM SOME TIME IN 1966 UNTIL APRIL 1, 1968 HAD BEEN REPRESENTED BY LOCAL 486, AFTER THAT DATE WERE REPRESENTED BY LOCAL 500. THE UNION DUES DEDUCTED BY STEINBERG'S FOR THOSE EMPLOYEES AFTER APRIL 1, 1968 WERE PAID TO LOCAL 500.

11. ON JULY 19, 1968 THE ASSOCIATION PLACED LOCAL 500 IN TRUSTEESHIP. ON NOVEMBER 9, 1969, WHILE THE TRUSTEESHIP WAS STILL IN EFFECT, THE TRUSTEES OF LOCAL 500 AND RESPONSIBLE OFFICERS OF STEINBERG'S ENTERED INTO THE COLLECTIVE AGREEMENT REFERRED TO ABOVE, WITH EXPIRY DATE OF APRIL 6, 1970. LOCAL 486 AND STEINBERG'S WERE NAMED AS PARTIES TO THE SAID AGREEMENT. A "COLLECTIVE AGREEMENT" AS DEFINED IN SECTION 1(1)(E) OF THE ACT INTER ALIA MEANS AN AGREEMENT IN WRITING BETWEEN AN EMPLOYER AND A TRADE UNION. SINCE AT THE TIME THE AGREEMENT WAS ENTERED INTO LOCAL 486 WAS A NON-EXISTENT ENTITY, THE BOARD FINDS THAT THE AGREEMENT OF NOVEMBER 9, 1969 WAS NOT A COLLECTIVE AGREEMENT. IT FOLLOWS THAT NO NOTICE TO BARGAIN COULD BE GIVEN UNDER SECTION 45 OF THE ACT. THIS BEING SO, THE MINISTER WAS WITHOUT JURISDICTION UNDER SECTION 15 OF THE ACT TO APPOINT A CONCILIATION OFFICER.

12. IN RESPONSE TO AN APPLICATION MADE BY MEMBERS OF LOCAL 500 IN EASTERN ONTARIO, THE ASSOCIATION ISSUED A CHARTER ON NOVEMBER 2, 1970 IN THE NAME OF RETAIL CLERKS UNION, LOCAL NO. 486. THE GEOGRAPHIC JURISDICTION OF THE NEW LOCAL AS SET OUT IN THE CHARTER COVERS OTTAWA, THE COUNTIES OF RENFREW, FRONTENAC, LANARK, LEEDS, GRENVILLE, CARLETON, DUNDAS, RUSSELL, STORMONT, PRESCOTT, GLENGARRY, HASTINGS,

PRINCE EDWARD, LENNOX AND ADDINGTON IN THE PROVINCE OF ONTARIO AND THE COUNTIES OF HULL AND GATINEAU IN THE PROVINCE OF QUEBEC. LOCAL 500 RELINQUISHED ITS JURISDICTION OVER THIS AREA. A MEETING OF THE NEWLY CHARTERED LOCAL 486 WAS HELD IN OTTAWA ON DECEMBER 1, 1970 WHICH WAS ATTENDED BY FROM 60 TO 90 MEMBERS FALLING WITHIN THE JURISDICTION OF THE NEW LOCAL. BY RESOLUTION THE CHARTER FOR THE NEW LOCAL 486 WAS ADOPTED AND PRO TEM OFFICERS WERE NAMED. IMMEDIATELY AFTER THE RESOLUTION WAS ADOPTED, RICHARD LEWIS, AN INTERNATIONAL REPRESENTATIVE OF THE ASSOCIATION WHO WAS IN ATTENDANCE AT THE MEETING, READ TO THOSE PRESENT A LETTER FROM THE INTERNATIONAL PRESIDENT OF THE ASSOCIATION DATED NOVEMBER 25, 1970 PLACING THE NEW LOCAL 486 UNDER TRUSTEESHIP. THE TRUSTEESHIP REMAINED IN EFFECT UNTIL JULY 1, 1971 ON WHICH DATE IT WAS TERMINATED. OFFICERS WERE THEN ELECTED AND BY-LAWS ADOPTED FOR THE NEW LOCAL 486, ALL IN ACCORDANCE WITH THE CONSTITUTION OF THE ASSOCIATION.

13. THE LOCAL CHARTERED BY THE ASSOCIATION ON NOVEMBER 2, 1970 WAS GIVEN THE SAME NAME AND NUMBER AS THAT LOCAL WHICH SURRENDERED ITS CHARTER AND WENT OUT OF EXISTENCE OF APRIL 1, 1968. THERE IS NO QUESTION, HOWEVER, THAT THE NEW LOCAL 486 IS AN ENTIRELY DIFFERENT ENTITY FROM THE FORMER LOCAL 486. ACCORDINGLY, THE FACT THAT A NEW LOCAL 486 WAS CHARTERED NEARLY A YEAR AFTER THE NOVEMBER 10, 1969 AGREEMENT WAS ENTERED INTO NAMING LOCAL 486 AND STEINBERG'S AS PARTIES CAN HAVE NO BEARING ON THE ISSUE BEFORE THE BOARD.

14. HAVING REGARD TO ALL OF THE FOREGOING, OUR ANSWER TO THE QUESTION REFERRED TO THE BOARD IN THE INSTANT REFERENCE IS THAT THE MINISTER WAS WITHOUT AUTHORITY TO APPOINT A CONCILIATION OFFICER.

947-71-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL 91 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. WELLS FARGO ARMoured EXPRESS, LTD. (RESPONDENT).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND F. W. MURRAY.

APPEARANCES AT THE HEARING: I. J. THOMSON FOR THE APPLICANT, JOHN G. PARKINSON, Q.C., FOR THE RESPONDENT.

DECISION OF THE BOARD: JANUARY 5, 1972.

1. THIS IS AN APPLICATION FOR CERTIFICATION WHEREIN THE BOARD ON OCTOBER 5, 1971 CERTIFIED THE APPLICANT AS BARGAINING AGENT FOR ALL EMPLOYEES OF THE RESPONDENT AT OTTAWA WITH CERTAIN EXCEPTIONS NOT HERE RELEVANT.

2. BY LETTER DATED NOVEMBER 26, 1971, THE RESPONDENT CHALLENGED THE BOARD'S JURISDICTION TO CERTIFY THE APPLICANT ON THE GROUNDS THAT THE EMPLOYEES WITH WHOM WE ARE HERE CONCERNED ARE EMPLOYED BY THE RESPONDENT AS GUARDS WITHIN THE MEANING OF SECTION 11 OF THE ACT AND THE APPLICANT ADMITS TO MEMBERSHIP PERSONS OTHER THAN GUARDS.

3. THE APPLICANT AGREED THAT THE BOARD SHOULD MAKE ITS DETERMINATION OF THE ISSUE RAISED BY THE RESPONDENT AND FOR THE PURPOSE OF THIS PROCEEDING WAIVED ANY OBJECTION IT MIGHT HAVE TO THE TIMELINESS OF THE RESPONDENT'S CHALLENGE TO THE BOARD'S JURISDICTION.

4. SECTION 11 OF THE ACT READS AS FOLLOWS:

THE BOARD SHALL NOT INCLUDE IN A BARGAINING UNIT WITH OTHER EMPLOYEES A PERSON EMPLOYED AS A GUARD TO PROTECT THE PROPERTY OF AN EMPLOYER, AND NO TRADE UNION SHALL BE CERTIFIED AS BARGAINING AGENT FOR A BARGAINING UNIT OF SUCH GUARDS AND NO EMPLOYER OR EMPLOYERS' ORGANIZATION SHALL BE REQUIRED TO BARGAIN WITH A TRADE UNION ON BEHALF OF ANY PERSONS WHO IS A GUARD IF, IN EITHER CASE, THE TRADE UNION ADMITS TO MEMBERSHIP OR IS CHARTERED BY, OR IS AFFILIATED, DIRECTLY OR INDIRECTLY, WITH AN ORGANIZATION THAT ADMITS TO MEMBERSHIP PERSONS OTHER THAN GUARDS.

5. THE APPLICANT ACKNOWLEDGED THAT IT IS A TRADE UNION THAT ADMITS TO MEMBERSHIP AND IS CHARTERED BY A TRADE UNION THAT ADMITS TO MEMBERSHIP PERSONS OTHER THAN GUARDS.

6. THE EVIDENCE ESTABLISHED THAT ALL THE EMPLOYEES IN THE BARGAINING UNIT ARE UNIFORMED AND CARRY SIDE-ARMS. THEY OPERATE ARMoured VEHICLES OWNED BY THE RESPONDENT AND WORK IN THREE-MAN CREWS CONSISTING OF A DRIVER GUARD WHO PERFORMS THE DRIVING FUNCTION, A MESSENGER GUARD WHO SITS OPPOSITE THE DRIVER AND A GUARD WHO SITS IN THE BACK OF THE VEHICLE AT ALL TIMES. THE EMPLOYEES ROTATE IN THE VARIOUS POSITIONS AND ON ANY GIVEN DAY, EACH EMPLOYEE MAY FUNCTION IN ANY ONE OF THE THREE POSITIONS.

7. THE DRIVER GUARD ACCOMPANIES THE MESSENGER GUARD WHILE PICK-UPS AND DELIVERIES OF VALUABLES ARE MADE. THE VEHICLE GUARD REMAINS INSIDE THE VEHICLE. ALL THREE IN COMBINATION PERFORM THE PROTECTIVE FUNCTION REQUIRED.

8. THE RESPONDENT OPERATES ITS VEHICLES UNDER A PUBLIC COMMERCIAL VEHICLE OPERATING LICENCE WHICH READS AS FOLLOWS:

FOR THE TRANSPORTATION IN 'ARMoured VEHICLES' OPERATED BY A DRIVER ACCOMPANIED BY AT LEAST ONE UNIFORMED SECURITY GUARD, LICENSED UNDER THE PRIVATE INVESTIGATORS AND SECURITY GUARDS ACT, (STATUTES OF ONTARIO 1965, CHAPTER 102) OF BULLION, COINS, CURRENCY, PRECIOUS METALS, NEGOTIABLE INSTRUMENTS AND OTHER ARTICLES OR COMMODITIES OF UNUSUAL VALUE WHICH CONSIGNORS AND/OR CONSIGNEES REQUIRE TO BE TRANSPORTED IN ARMoured VEHICLES FROM POINTS IN THE PROVINCE OF ONTARIO TO THE ONTARIO-QUEBEC BORDER AT ALL BORDER CROSSING POINTS FOR FURTHERANCE TO POINTS IN THE PROVINCE OF QUEBEC AS AUTHORIZED AND FROM THE ONTARIO-QUEBEC BORDER AT ALL BORDER CROSSING POINTS TO POINTS IN THE PROVINCE OF ONTARIO.

PROVIDED THAT "ARMoured VEHICLES" MEAN 'VEHICLES SPECIALLY CONSTRUCTED WITH BODIES OF ARMoured PLATE AND WINDOWS OF BULLET PROOF GLASS'.

9. ALL THE EMPLOYEES IN THE BARGAINING UNIT ARE LICENSED UNDER THE PRIVATE INVESTIGATORS AND SECURITY GUARDS ACT.

10. THE EMPLOYEES OF SOME OF THE RESPONDENT'S CUSTOMERS ARE PRESENTLY REPRESENTED BY THE APPLICANT UNION.

11. HAVING REGARD TO THE NATURE OF THE FUNCTIONS PERFORMED BY THE EMPLOYEES AND THE TYPE OF VEHICLE DRIVEN BY THEM, WE FIND THAT THE EMPLOYEES ARE NOT MERELY TRUCK DRIVERS AND HELPERS. THEIR PRIME FUNCTION IS THAT OF A GUARD WITHIN THE MEANING OF SECTION 11 OF THE ACT. IN THIS CASE WE ARE NOT DEALING WITH AN EMPLOYEE WHO IS REQUIRED TO TRANSPORT VALUABLES AS AN INCIDENTAL FUNCTION TO THE EMPLOYEE'S PRIMARY DUTIES AND RESPONSIBILITIES SUCH AS AN OFFICE CLERK WHO IS REQUIRED TO MAKE REGULAR BANK DEPOSITS. EVERY EMPLOYEE, TO A GREATER OR LESSER DEGREE, IS REQUIRED TO PROTECT THE PROPERTY OF AN EMPLOYER OVER WHICH HE HAS CUSTODY OR CONTROL. A GUARD FOR THE PURPOSE OF SECTION 11 OF THE ACT MUST BE PRIMARILY EMPLOYED AS A GUARD TO PROTECT THE PROPERTY OF AN EMPLOYER.

12. SINCE WE HAVE FOUND THAT ALL THE EMPLOYEES IN THE BARGAINING UNIT ARE EMPLOYED AS GUARDS WITHIN THE MEANING OF SECTION 11 OF THE ACT AND SINCE THE APPLICANT ADMITS TO MEMBERSHIP PERSONS OTHER THAN GUARDS, WE ARE PRECLUDED BY THE PROVISIONS OF SECTION 11 FROM CERTIFYING THE APPLICANT AS BARGAINING AGENT FOR SUCH EMPLOYEES OF THE RESPONDENT.

13. WE ACCORDINGLY REVOKE OUR DECISION DATED OCTOBER 5, 1971 IN THIS MATTER.

14. FOR THE REASONS SET OUT ABOVE, THIS APPLICATION IS THEREFORE DISMISSED.

872-71-U: THE INTERNATIONAL BROTHERHOOD OF PAINTERS AND ALLIED TRADES - LOCAL UNION 1783 (COMPLAINANT) V. FANSHAWE PAINTING LIMITED (RESPONDENT).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS P. J. O'KEEFFE AND H. F. IRWIN.

APPEARANCES AT THE HEARING: DAVID TUGENDER FOR THE COMPLAINANT AND ROBERT B. LIVINGSTONE FOR THE RESPONDENT.

DECISION OF VICE-CHAIRMAN RORY F. EGAN AND BOARD MEMBER P. J. O'KEEFFE: JANUARY 5, 1972.

1. THE NAME "FANSHAWE PAINTING LTD." APPEARING IN THE STYLE OF CAUSE OF THIS COMPLAINT AS THE NAME OF THE RESPONDENT IS AMENDED TO READ: "FANSHAWE PAINTING LIMITED".

2. THIS IS A COMPLAINT UNDER SECTION 79 [FORMERLY SECTION 65] OF THE LABOUR RELATIONS ACT IN WHICH THE COMPLAINANT COMPLAINS THAT ALISTAIR MCTURK, WILLIAM FOXCROFT, ROBERT DEVOST AND ANTHONY DA SILVA HAVE BEEN DEALT WITH BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF SECTION 58(A) [FORMERLY SECTION 50(A)] OF THE ACT. THE COMPLAINANT REQUESTS THAT THE RESPONDENT REINSTATE THESE EMPLOYEES IN THEIR EMPLOYMENT WITH COMPENSATION FOR LOSS OF EARNINGS FROM AUGUST 12, 1971.

3. MICHAEL CLARK, THE BUSINESS REPRESENTATIVE FOR THE COMPLAINANT, TESTIFIED THAT HE CALLED A MEETING OF EMPLOYEES OF THE RESPONDENT IN THE LABOUR TEMPLE ON THE EVENING OF AUGUST 12, 1971. AS A RESULT OF THE MEETING, NINE EMPLOYEES SIGNED UNION CARDS. AMONG WHOM WERE ALISTAIR MCTURK, WILLIAM FOXCROFT, ROBERT DEVOST AND ANTHONY DA SILVA. THE OTHER EMPLOYEES WHO SIGNED, CONTINUED TO WORK FOR THE RESPONDENT AFTER AUGUST 13TH AND NO COMPLAINT HAS BEEN MADE WITH RESPECT TO THEM.

4. ON THE MORNING OF AUGUST 13TH, 1971, AS EACH OF THE FOUR NAMED EMPLOYEES REPORTED FOR WORK, HE WAS TOLD BY MR. JOHN PUSKEPPELIES, THE GENERAL MANAGER, THAT HE WAS BEING LAID OFF BECAUSE OF DISSATISFACTION WITH HIS WORK. THEY ALL TESTIFIED IN SUPPORT OF THE COMPLAINT.

5. WILLIAM FOXCROFT SAID THAT HE BECAME INVOLVED IN AN ARGUMENT WITH PUSKEPPELIES CONCERNING THE REASONS FOR DISCHARGE WHEN HE RETURNED FOR HIS CHEQUE IN THE AFTERNOON ON AUGUST 13TH. FOXCROFT STATED THAT PUSKEPPELIES TOLD HIM HE HAD NOT LAID HIM OFF BECAUSE OF HIS WORKMANSHIP BUT RATHER BE-

CAUSE HE HAD SIGNED FOR THE UNION THE PREVIOUS NIGHT. FOXCROFT SAID HE TOLD PUSKEPPELIES THAT HE, FOXCROFT, KNEW WHO HAD TOLD PUSKEPPELIES ABOUT THE SIGNING UP IN THE UNION AND ADDED THAT HE WARNED PUSKEPPELIES THAT IF A FELLOW DID THAT TO HIS WORKING MATES, HE HAD BETTER LOOK OUT FOR WHAT HE MIGHT DO TO PUSKEPPELIES HIMSELF. FOXCROFT SAID THAT PUSKEPPELIES DENIED THAT ANYONE HAD INFORMED HIM ABOUT THE MEETING. HE TESTIFIED THAT PUSKEPPELIES TOLD HIM THAT HE HAD SEEN HIM, FOXCROFT, AND THE OTHER COMING OUT OF THE UNION HALL AND HAD ALSO RECOGNIZED SOME OF THE EMPLOYEES' CARS PARKED IN THE PARKING LOT. FOXCROFT TESTIFIED THAT WHEN HE LEFT THE OFFICE IN THE MORNING HE NOTICED TWO NEW PAINTERS REPORTING FOR WORK.

6. ANTHONY DA SILVA, WHO HAS BEEN A PAINTER FOR ELEVEN YEARS, STATED THAT HE REPORTED FOR WORK BETWEEN 7:00 A.M. AND 8:00 A.M. ON AUGUST 17TH. HE SAID THAT JOHN PUSKEPPELIES CAME IN AND SAID TO HIM, I AM SORRY YOU ARE LAID OFF BECAUSE I AM NOT SATISFIED WITH WHAT YOU DID LAST NIGHT. HE SAID HE WAS TOLD TO RETURN FOR HIS CHEQUE AT 2:30 P.M. HE SAID THAT FOXCROFT WAS THERE AT THE TIME AND THAT HE, DASILVA, OVERHEARD PUSKEPPELIES TELLING FOXCROFT THAT HE WAS BEING LAID OFF BECAUSE HE HAD BEEN AT THE MEETING THE PREVIOUS NIGHT.

7. ALISTAIR MCTURK STATED THAT HE HAS BEEN A PAINTER FOR EIGHT YEARS. HE ATTENDED THE UNION MEETING ON AUGUST 12TH AND JOINED THE UNION. WHEN HE REPORTED FOR WORK THE FOLLOWING MORNING HE WAS TOLD BY PUSKEPPELIES THAT HE WOULD HAVE TO LET HIM GO BECAUSE HIS WORK WAS UNSATISFACTORY. HE SAID HE WAS SURPRISED AT THE NEWS. HE HAD WORKED FOR THE RESPONDENT FOR SOMETHING OVER SIX MONTHS. HE FELT THAT AFTER SIX MONTHS' EMPLOYMENT YOU DO NOT SUDDENLY BECOME UNSATISFACTORY.

8. ROBERT DEVOST ATTENDED THE UNION MEETING ON AUGUST 12TH AND WAS DISCHARGED ON THE MORNING OF AUGUST 13TH AS HE REPORTED FOR WORK. PUSKEPPELIES SAID HE WAS LAYING HIM OFF BECAUSE HIS WORK WAS NOT GOOD ENOUGH. DEVOST HAD QUIT THE EMPLOY OF THE RESPONDENT ABOUT TWO WEEK PRIOR TO HIS TERMINATION AS THE RESULT OF A DISPUTE ABOUT TRAVELLING EXPENSES. THE FOLLOWING DAY, WHEN DEVOST CAME TO PICK UP HIS CHECK, HE ASKED FOR THE JOB BACK. HE WAS REHIRED WITH A LOSS OF TWO DAYS.

9. DURING THE TWO DAYS HE WAS OFF, DEVOST WENT TO THE UNION AND TRIED TO JOIN. HE WAS ADVISED TO WAIT AS THE UNION WAS TRYING TO GET IN TO FANSHAW AND THIS WOULD MAKE A DIFFERENCE WITH RESPECT TO THE INITIATION FEE PAYABLE. WHEN HE RETURNED TO WORK, DEVOST TOLD NORMAN LAVINE, HIS FOREMAN, THAT HE HAD BEEN TO SEE THE UNION. HE SAID THAT LAVINE WAS AWARE THAT THE UNION WAS TRYING TO GET IN.

10. EVIDENCE ON BEHALF OF THE RESPONDENT WAS GIVEN BY BOB MEDeiros, A FOREMAN. HE HAD WORKED EIGHT MONTHS AT FANSHAW. HE ATTENDED

THE UNION MEETING ON AUGUST 12TH AND SIGNED UP. HE WAS ASKED IF HE HAD CALLED A PERSON NAMED MANUEL ON THE NIGHT OF AUGUST 12TH. HE FIRST REPLIED THAT HE WOULD NOT RECALL DOING SO. ON BEING ASKED IF HE HAD CALLED ANYONE ON THE 11TH, 12TH OR 13TH OF AUGUST TO TELL THEM THAT THERE HAD BEEN A MEETING AND THAT THE COMPANY KNEW WHO HAD SIGNED UP, HE SAID HE REMEMBERED CALLING SOME PERSON - THAT IT MIGHT HAVE BEEN MANUEL. HE THEN SAID THAT HE HAD CALLED MANUEL AND TOLD HIM HE WAS NOT INTERESTED IN THE UNION ANY MORE BECAUSE HE THOUGHT THE UNION WAS A BIG PUT ON. HE STATED THAT MANUEL ASKED HIM NOT TO GO AHEAD AND TELL THE BOSS. MEDEIROS SAID HE DID NOT TELL MANUEL THAT HE HAD TOLD THE BOSS ANYTHING. THIS PHONE CALL TOOK PLACE ABOUT THREE QUARTERS OF AN HOUR AFTER THE MEETING. NOTWITHSTANDING HIS INITIAL INABILITY TO RECALL PHONING ANYONE ON THE NIGHT OF THE MEETING, THE WITNESS WENT ON TO SAY THAT HE LEFT THE MEETING HALL THAT NIGHT IN THE COMPANY OF MANUEL AND CLARK, THE UNION ORGANIZER. HE STATED THAT WHEN HE WENT HOME HE TALKED THE MATTER OVER WITH HIS WIFE AND CALLED MANUEL ON THE TELEPHONE AND TOLD HIM HE, MEDEIROS, WAS OUT OF THE UNION. LATER HE, WITH OTHER EMPLOYEES WHO HAD JOINED AT THE MEETING, SIGNED A RESIGNATION FROM THE UNION THAT HAD BEEN PREPARED BY FOREMAN LAVINE.

11. NORMAN LAVINE HAS WORKED FOR THE RESPONDENT COMPANY FOR SEVEN MONTHS. HE, LIKE MEDEIROS, IS A SENIOR FOREMAN. HE DID NOT ATTEND THE UNION MEETING ON AUGUST 12, 1971. HE STATED THAT HE WAS ASKED TO GO BUT COULD SEE NO PURPOSE IN DOING SO. HE HAD BEEN TOLD OF THE MEETING THE DAY BEFORE IT WAS HELD. HE SAID THAT ALL THE EMPLOYEES KNEW ABOUT IT, BUT THAT MANAGEMENT DID NOT KNOW. LAVINE SAID HE HAD HEARD THAT CLARK WAS ORGANIZING THE EMPLOYEES A COUPLE OF DAYS BEFORE THE MEETING. HE ALSO ADMITTED THAT DEVOST HAD TOLD HIM THAT CLARK WAS THINKING OF ORGANIZING THE COMPANY EMPLOYEES AT THE TIME OF THE FORMER'S REHIRING. HE STATED HE HAD BEEN A UNION MEMBER IN THE PAST BUT HAD RESIGNED. LAVINE SAID HE WAS FOREMAN OVER DEVOST, FOX-CROFT, MCTURK AND DASILVA FOR A NUMBER OF MONTHS. HE SAID HE HAD HAD TO SPEAK TO THEM ALL ABOUT THE SLOPPINESS OF THEIR WORK. LAVINE STATED THAT PUSKEPPELIES HAD PUT PRESSURE ON HIM TO GET RID OF DEVOST AND MCTURK. HE SAID THAT PUSKEPPELIES WANTED HIM TO LAY THEM OFF BUT HE FELT IT WAS NOT UP TO HIM TO DO IT. HE SAID HE HAD NO CHOICE BUT TO KEEP THEM ON AND HE WOULD HAVE LET THEM GO WHEN THE WORK WAS DONE. HE SAID HE WAS NOT SURPRISED BY THE LAY OFF BECAUSE, HE SAID, A COUPLE OF WEEKS EARLIER, PUSKEPPELIES SAID HE WAS GOING TO LET THEM GO.

12. LAVINE NOT ONLY DID NOT ATTEND THE MEETING, BUT SOMETIME LATER, TOOK IT UPON HIMSELF TO PREPARE TYPEWRITTEN NOTICES OF RESIGNATION FROM THE UNION. THESE HE TOOK AROUND TO THE EMPLOYEES AND ASKED THEM IF THEY WOULD BE WILLING TO SIGN. HE SAID HE DID IT BECAUSE HE FELT THE FELLOWS HAD BEEN GYPED. HE STATED THAT HE TOLD PUSKEPPELIES NOTHING ABOUT THIS.

13. MR. JOHN PUSKEPPELIES TESTIFIED THAT HE MAKES ALL BUSINESS DECISIONS AND IS MAINLY RESPONSIBLE FOR HIRING AND FIRING OF EMPLOYEES.

14. HE STATED THAT HE OFTEN ADVERTISED FOR HELP AND PUT IN THE ADVERTISEMENT THAT THE REQUIREMENT WAS FOR NON-UNION PAINTERS. HE EXPLAINED THAT HE DID THIS IN ORDER TO INFORM PROSPECTIVE EMPLOYEES THAT THE BUSINESS WAS NON-UNION AND THAT THE WAGES, FRINGE BENEFITS AND OTHER CONDITIONS NORMALLY PREVALENT, WHERE THERE WAS A UNION, WOULD NOT BE AVAILABLE. HE SAID HIS COMPANY PAYS ON A DIFFERENT WAGE SCALE THAN WHERE A UNION IS INVOLVED. HE MENTIONED THAT WITH A UNION CONTRACT HE WOULD HAVE TO GIVE TWO HOURS' NOTICE OF LAY-OFF. ON THE OTHER HAND, HE STATED HE FREQUENTLY HIRED PAINTERS WHOM HE KNEW TO BE MEMBERS OF THE PAINTERS' UNION. HE PAYS UNION RATES TO SOME EMPLOYEES AND TO OTHERS HE DOES NOT. HE STATED THAT HE WAS NOT COMPELLED WHOM HE HAD EMPLOYED WITH THE KNOWLEDGE THAT THEY WERE MEMBERS OF THE UNION.

15. PUSKEPPELIES WAS ADVERSELY CRITICAL OF FOXCROFT'S WORK. HE SAID HE WAS A VERY "BEEFY" AND COMPLAINING SORT OF PERSON. HE STATED THAT FOXCROFT TRIED TO DISTURB THE OTHER PAINTERS AND TOLD THEM NOT TO WORK TOO HARD. PUSKEPPELIES THEN REVIEWED A NUMBER OF JOBS UPON WHICH FOXCROFT HAD WORKED AND OUTLINED WHAT HE CONSIDERED TO BE THE SHORTCOMINGS IN THE CARRYING OUT OF HIS TASKS. HE SAID HE HAD RECEIVED COMPLAINTS FROM TIME TO TIME FROM THE FOREMAN CONCERNING FOXCROFT'S SLOPPINESS AND POOR WORKMANSHIP. HE SAID THE FOREMAN ASKED FOR A SUBSTITUTE. HE SAID HE WOULD HAVE LET FOXCROFT GO SOONER IF CONDITIONS HAD PERMITTED IT. HE SAID HE DECIDED TO LET HIM GO ON AUGUST 13TH BECAUSE ON THE PREVIOUS NIGHT HE HAD RECEIVED A CALL FROM THE FOREMAN ABOUT FOXCROFT AND TWO OTHER EMPLOYEES. HE SAID HE FELT HE JUST WOULD NOT STAND IT ANY LONGER. IN THE BUSY SEASON, HE SAID, THE PAINTERS GET THE IDEA THAT THEY CAN RUN THE COMPANY BECAUSE HELP IS HARD TO OBTAIN. HE HAD HAD COMPLAINTS FROM FOREMAN LAVINE AND MED-UIROS ABOUT FOXCROFT. HE STATED THAT HE HAD BEEN THINKING OF GETTING RID OF FOXCROFT FOR A LONG TIME, BUT HAD NO ALTERNATIVE THAN TO KEEP HIM ON DURING THE BUSY SEASON.

16. PUSKEPPELIES SAID THAT HE HAD BEEN IN ELMIRA AND STRATFORD ON AUGUST 12TH AND DID NOT RETURN HOME UNTIL ABOUT 7:00 P.M. HE SAID THAT BETWEEN 7:00 P.M. AND 8:00 P.M. THAT EVENING, HE RECEIVED A CALL FROM THE FOREMAN COMPLAINING ABOUT FOXCROFT. HE TOLD THE FOREMAN THAT IT WAS HARD TO GET PAINTERS, THAT HE WOULD SLEEP ON IT. HE ALSO RECEIVED A COMPLAINT ABOUT THREE EMPLOYEES WORKING IN AYLMER. THESE WERE: DEVOST, DASILVA AND MCTURK. HE SAID THE WHOLE THING CAME TO A HEAD THAT EVENING.

17. WITH RESPECT TO DASILVA, PUSKEPPELIES STATED THAT HE SPOKE TO HIM CONTINUALLY DURING THE TIME OF HIS EMPLOYMENT WITH REGARD TO

THE POOR QUALITY OF HIS WORK. HE ALSO SAID THAT HE HAD SPOKEN TO DASILVA'S FOREMAN ABOUT THE MAN'S WORK. HE REVIEWED SEVERAL JOBS UPON WHICH DASILVA HAD WORKED AND POINTED OUT "UNUSUAL" DEFICIENCIES IN HIS WORK. PUSKEPPELIES AGREED THAT DASILVA WAS IN THE COMPANY OFFICE WHILE HE WAS TALKING TO FOXCROFT.

18. PUSKEPPELIES SAID THAT ALISTAIR MCTURK COULD DO A GOOD PAINTING JOB IF HE TRIED. HE SAID, HOWEVER, THAT HE HAD TO SPEAK TO MCTURK ON A NUMBER OF OCCASIONS CONCERNING HIS WORK. MCTURK WORKED ON A SCHOOL IN AYLMER CONCERNING WHICH A CONSIDERABLE AMOUNT OF TESTIMONY WAS GIVEN TO ESTABLISH THAT MCTURK, DEVOST AND DASILVA HAD DONE SOME VERY POOR WORK THERE. THEIR WORK, PUSKEPPELIES SAID, RESULTED IN LIST OF DEFICIENCIES WHICH HE CONSIDERED TO BE UNUSUALLY LONG AND CRITICAL.

19. PUSKEPPELIES SAID HE HAD HAD TO SPEAK TO DEVOST ABOUT COMING TO WORK LATE AND FOR THE POOR QUALITY OF HIS WORKMANSHIP. HIS WORK, PUSKEPPELIES SAID, INDICATED THAT HE WAS NOT REALLY A QUALIFIED PAINTER BUT RATHER A PAINTER HELPER.

20. THE COMPANY WITNESSES, MEDEIROS AND LAVINE, EACH KNEW IN ADVANCE OF THE UNION MEETING. LAVINE HAD BEEN TOLD EARLIER BY DEVOST THAT CLARK WAS ABOUT TO ORGANIZE THE COMPANY EMPLOYEES. MEDEIROS ATTENDED THE MEETING AND KNEW ALL WHO WERE PRESENT. LAVINE EVEN WENT SO FAR AS TO PREPARE LETTERS OF RESIGNATION IN AN ATTEMPT TO GET THE EMPLOYEES TO RENOUNCE THE UNION. IT IS SIMPLY BEYOND BELIEF THAT NEITHER OF THESE FOREMEN WHO WERE OPPOSED TO THE UNION KEPT ALL THEIR KNOWLEDGE TO THEMSELVES LEAVING PUSKEPPELIES IGNORANT OF WHAT WAS TRANSPIRING. IT IS PARTICULARLY HARD TO ACCEPT THAT LAVINE, WHO SO ACTIVELY OPPOSED THE UNION, DID NOT INFORM PUSKEPPELIES.

21. IT IS CLEAR, UPON THE EVIDENCE, THAT PUSKEPPELIES FREQUENTLY HIRED PERSONS WHOM HE KNEW TO BE UNION MEMBERS. IT IS EQUALLY CLEAR FROM HIS EVIDENCE THAT HE WAS RUNNING A NON-UNION OPERATION, PRINCIPALLY FOR ECONOMIC REASONS. AS ALREADY NOTED, HE TESTIFIED THAT HIS COMPANY PAID ON A DIFFERENT WAGE SCALE THAN WHERE A UNION WAS INVOLVED. IT IS OBVIOUS, OF COURSE, THAT SO LONG AS HIS EMPLOYEES WERE SIMPLY MEMBERS OF THE UNION AND THE UNION WAS NOT THEIR BARGAINING AGENT, HE WAS ABLE TO CARRY ON HIS BUSINESS ON THE ECONOMIC BASIS WHICH HE DESIRED, REGARDLESS OF THE EMPLOYEES' AFFILIATIONS. HOWEVER, WHEN THESE EMPLOYEES, NOT ONLY JOINED THE UNION, BUT ALSO SOUGHT TO HAVE IT ACT AS THEIR BARGAINING AGENT WITH THE POSSIBLE CONSEQUENCES OF UNION RATES, FRINGE BENEFITS AND OTHER CONDITIONS OF EMPLOYMENT HE SAW A THREAT TO HIS MODUS OPERANDI WHICH, IN OUR OPINION, HE SOUGHT TO ELIMINATE BY DISCHARGING THE EMPLOYEES CONCERNED DURING THE ORGANIZATIONAL STAGES. IT WAS THIS STEP, WE BELIEVE, THAT HE MAY HAVE "SLEPT ON" IF, INDEED, WE ACCEPT HIS EVIDENCE THAT HE GAVE OVERNIGHT CONSIDERATION TO THE PROBLEM. IN OUR OPINION, THE ATTACK ON THE COMPETENCY OF THE EMPLOYEES WAS NO MORE THAN AN ATTEMPT TO COVER THE REAL CAUSE OF DISCHARGE.

22. ON THE BASIS OF ALL THE EVIDENCE WE FIND THAT THE RESPONDENT DEALT WITH ALISTAIR MCTURK, WILLIAM FOXCROFT, ROBERT DEVOST AND ANTHONY DASILVA CONTRARY TO THE PROVISIONS OF SECTION 50 OF THE LABOUR RELATIONS ACT.

23. THE BOARD ACCORDINGLY DETERMINES THAT EACH OF THE ABOVE-NAMED GRIEVORS BE REINSTATED FORTHWITH IN THE SAME OR LIKE EMPLOYMENT WITH THE SAME WAGES AS EACH HAD BEFORE HIS TERMINATION. IT IS NOTED THAT EACH OF THE GRIEVORS HAD OBTAINED NEW EMPLOYMENT BY THE DATE OF THE HEARING.

24. THE BOARD FURTHER DIRECTS THAT THE RESPONDENT PAY TO:

WILLIAM FOXCROFT	\$480.00
ANTHONY DASILVA	\$224.00
ROBERT DEVOST	\$132.00
ALISTAIR MCTURK	\$452.00

AS COMPENSATION FOR LOSS OF EARNINGS BETWEEN THE DATE OF DISCHARGE AND THE DATE OF THE HEARING ON OCTOBER 1, 1971 OF THIS MATTER.

25. THE BOARD FURTHER DIRECTS THAT THE PARTIES MEET FORTHWITH WITH A VIEW TO AGREEING UPON THE AMOUNT OF LOSS OF EARNINGS, IF ANY, SUFFERED BY ANY OF THE GRIEVORS BETWEEN OCTOBER 1, 1971 AND THE DATE OF REINSTATEMENT. IN THE EVENT THE PARTIES ARE UNABLE TO AGREE ON THE AMOUNT ABOVE REFERRED TO, WITHIN 14 DAYS AFTER THE RELEASE OF THIS DETERMINATION OR WITHIN SUCH FURTHER PERIOD AS THE PARTIES MAY AGREE UPON, THE BOARD AT THE REQUEST OF EITHER PARTY WILL HOLD A FURTHER HEARING AT WHICH THE PARTIES WILL HAVE AN OPPORTUNITY TO MAKE REPRESENTATIONS AS TO ANY ADDITIONAL AMOUNT THAT MAY BE CLAIMED.

DECISION OF BOARD MEMBER H. F. IRWIN: JANUARY 5, 1972.

SECTION 79 OF THE LABOUR RELATIONS ACT STATES THAT THE BOARD MAY REINSTATE EMPLOYEES IN EMPLOYMENT WITH OR WITHOUT COMPENSATION FOR LOSS OF EARNINGS RESULTING FROM THEIR DISMISSAL.

HAVING REGARD TO ALL THE SPECIAL CIRCUMSTANCES OF THIS CASE INCLUDING THE POOR WORKMANSHIP OF THE FOUR AGGRIEVED EMPLOYEES, I WOULD HAVE EXERCISED THE DISCRETION GIVEN THE BOARD UNDER THE PROVISIONS OF SECTION 79 OF THE ACT AND ORDERED THEIR REINSTATEMENT WITHOUT COMPENSATION.

1375-71-M: THE ONTARIO COUNTY BOARD OF EDUCATION (APPLICANT) V. CANADIAN UNION OF PUBLIC EMPLOYEES LOCAL 218 (RESPONDENT).

- AND -

1383-71-M: CANADIAN UNION OF PUBLIC EMPLOYEES LOCAL 218 (APPLICANT) V. THE ONTARIO COUNTY BOARD OF EDUCATION (RESPONDENT).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS O. HODGES AND F. W. MURRAY.

DECISION OF THE BOARD: JANUARY 7, 1972.

1. THE BOARD DIRECTS THAT THE ABOVE MATTERS BE CONSOLIDATED.

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3. MR. A. A. MORROW, EXAMINER, IS AUTHORIZED TO INQUIRE INTO AND REPORT TO THE BOARD ON THE DUTIES AND RESPONSIBILITIES OF EDWARD GEORGE GREENE AND CAROLYN ANN REDPATH.

. . .

5. SINCE THE BOARD'S JURISDICTION UNDER SECTION 95(2) IS CONFINED TO DETERMINING WHETHER THE DISPUTED PERSONS ARE EMPLOYEES FOR THE PURPOSES OF THE ACT, THE BOARD'S DETERMINATION MAY NOT NECESSARILY RESOLVE THE REAL ISSUE BETWEEN THE PARTIES. HOWEVER, THE BOARD'S DECISION MAY BE PRELIMINARY TO THE RESOLUTION OF THE ISSUE WHETHER THE DISPUTED PERSONS ARE INCLUDED IN THE BARGAINING UNIT REPRESENTED BY THE TRADE UNION.

1265-71-R: AMALGAMATED CLOTHING WORKERS OF AMERICA (APPLICANT) V. STRUDEX FIBRES LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: FRANK V. BOSCARIOL, VICE-CHAIRMAN, AND BOARD MEMBERS P. J. O'KEEFFE AND H. F. IRWIN.

APPEARANCES AT THE HEARING: A. M. MINSKY AND TONY DUCHARME FOR THE APPLICANT; G. R. LUDWIG, E. WAGNER AND A. LOSCHNIG FOR THE RESPONDENT; T. S. KELLENER FOR THE OBJECTORS.

DECISION OF THE BOARD: JANUARY 10, 1972.

1. THE NAME "STRUDEX FIBRES, DIV. OF KRAUS CARPET" APPEARING IN THE STYLE OF CAUSE OF THIS APPLICATION AS THE NAME OF THE RESPONDENT IS AMENDED TO READ: "STRUDEX FIBRES LIMITED."

. . .

3. HAVING REGARD TO THE AGREEMENT OF THE PARTIES, THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT WATERLOO, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN AND FORELADY, SUPERVISORS, OFFICE AND SALES STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

4. HAVING REGARD TO ALL OF THE EVIDENCE AS ADDUCED AT THE HEARINGS OF THIS MATTER ON DECEMBER 2 AND DECEMBER 29, 1971, THE BOARD FURTHER FINDS THAT JULIUS BENDIK, HORST WENS DORF, ALBERT LOSCHNIG (JR.), EACH CLASSIFIED BY THE RESPONDENT AS "MACHINERY MAINTENANCE" AND BODO ROESSLER, CLASSIFIED BY THE RESPONDENT AS "FIBRE LINE OPERATOR", DO NOT EXERCISE MANAGERIAL FUNCTIONS WITHIN THE PROVISIONS OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT, AND ARE THEREFORE INCLUDED IN THE BARGAINING UNIT. WE FURTHER FIND THAT BOUMEDIENE TOUHAMI, CLASSIFIED BY THE RESPONDENT AS "MACHINERY MAINTENANCE", DOES EXERCISE MANAGERIAL FUNCTIONS WITHIN THE PROVISIONS OF SECTION 1(3)(B) OF THE ACT, AND IS THEREFORE EXCLUDED FROM THE BARGAINING UNIT.

5. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY PER CENT BUT LESS THAN SIXTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON NOVEMBER 24, 1971, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES UNDER SECTION 92(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

6. THERE WAS FILED WITH THE BOARD A STATEMENT OF DESIRE BEARING THE SIGNATURES OF 17 PERSONS PURPORTING TO BE EMPLOYEES OF THE RESPONDENT. SINCE ON THE BASIS OF THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT, IT HAS ONLY ESTABLISHED ITS ENTITLEMENT TO THE TAKING OF A REPRESENTATION VOTE, THE SAID STATEMENT CAN IN NO WAY AFFECT THE POSITION OF THE APPLICANT. ACCORDINGLY, IT WAS NOT NECESSARY TO INQUIRE INTO THE ORIGINATION, PREPARATION AND CIRCULATION OF THE SAID STATEMENT.

7. THERE IS ALSO ON FILE WITH THE BOARD A LETTER FROM THE APPLICANT DATED NOVEMBER 26, 1971, CHARGING, IN EFFECT, EMPLOYER INTERFERENCE IN THIS MATTER. THE APPLICANT ACCORDINGLY, REQUESTED THAT THE BOARD EXERCISE ITS DISCRETION PURSUANT TO SECTION 7(4) OF THE ACT AND CERTIFY THE APPLICANT WITHOUT THE TAKING OF A REPRESENTATION VOTE.

8. HAVING CAREFULLY REVIEWED ALL OF THE EVIDENCE ADDUCED IN THIS REGARD, WHICH WAS EXTENSIVE, AND UPON HEARING THE REPRESENTATIONS OF THE PARTIES THERETO, THE BOARD IS SATISFIED THAT THE TRUE WISHES OF THE EMPLOYEES IN THESE CIRCUMSTANCES ARE NOT LIKELY TO BE DISCLOSED BY A REPRESENTATION VOTE.

9. THE BOARD THEREFORE IN THE EXERCISE OF ITS DISCRETION, PURSUANT TO SECTION 7(4) OF THE ACT, FINDS THAT THE APPLICANT HAS ESTABLISHED ITS ENTITLEMENT TO OUTRIGHT CERTIFICATION WITHOUT THE TAKING OF A REPRESENTATION VOTE.

10. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

1084-71-R: CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) V. TORONTO GENERAL HOSPITAL (RESPONDENT) V. CANADIAN UNION OF OPERATING ENGINEERS, LOCAL 101 (INTERVENER #1) V. CANADIAN UNION OF PUBLIC EMPLOYEES (INTERVENER #2).

- AND -

1112-71-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. TORONTO GENERAL HOSPITAL (RESPONDENT) V. CANADIAN UNION OF OPERATING ENGINEERS - LOCAL 101 (INTERVENER #1) V. CSAO NATIONAL (INC.) (INTERVENER #2) V. CANADIAN UNION OF OPERATING ENGINEERS (INTERVENER #3).

BEFORE: O.B. SHIME, VICE-CHAIRMAN, AND BOARD MEMBERS O. HODGES AND J.E.C. ROBINSON, Q.C.

APPEARANCES AT THE HEARING: K. GILBERT AND S. MILLER FOR CANADIAN UNION OF OPERATING ENGINEERS AND CANADIAN UNION OF OPERATING ENGINEERS - LOCAL 101; J. HORODECKYJ, W.J. WHITAKER, Q.C. AND D.C. BELYEA FOR TORONTO GENERAL HOSPITAL; T. ARMSTRONG, W.A. ACTON AND RUBY CHISHOLM FOR CANADIAN UNION OF PUBLIC EMPLOYEES; S.T. GOUDGE AND TERENCE O'DELL FOR CSAO NATIONAL (INC.).

DECISION OF O.B. SHIME, VICE-CHAIRMAN, AND BOARD MEMBER O. HODGES: JANUARY 10, 1972.

1. THESE APPLICATIONS ARE CONSOLIDATED.

2. CSAO NATIONAL (INC.) WITHDREW FROM THE PROCEEDINGS AT THE OPENING OF THE HEARING.

. . .

6. CUOE SEEKS TO SEVER AS AN APPROPRIATE BARGAINING UNIT THE SKILLED TRADESMEN EMPLOYED BY THE RESPONDENT HOSPITAL FROM ANY BARGAINING UNIT WHICH THE BOARD FINDS TO BE APPROPRIATE. BOTH CUPE AND CUOE HAVE MEMBERSHIP WITHIN THIS SKILLED TRADES GROUP AND THEY ARE THEREFORE COMPETING FOR THOSE PERSONS.

7. THE SKILLED TRADES GROUP HAD PREVIOUSLY BEEN REPRESENTED BY SERVICE EMPLOYEES UNION LOCAL 204 IN A MORE COMPREHENSIVE OR ALL EMPLOYEE BARGAINING UNIT WHICH PARALLELS THE BARGAINING UNIT THAT CUPE IS NOW SEEKING TO REPRESENT. THAT LOCAL OR ITS PREDECESSOR HAD BARGAINED WITH THE RESPONDENT HOSPITAL FOR AN ON BEHALF OF THE COMPREHENSIVE UNIT FOR APPROXIMATELY TWENTY-FIVE YEARS.

8. THE SKILLED TRADES GROUP IS A SEPARATELY ADMINISTERED GROUP WITHIN THE FRAMEWORK OF THE HOSPITAL'S ORGANIZATION. THE EMPLOYEES HAVE SEPARATE SUPERVISION AND THEY REPORT TO THE SAME LOCATION WHICH IS PHYSICALLY SEPARATE FROM THE OTHER LOCATION TO WHICH THE REMAINING

EMPLOYEES REPORT. THEY ALL HAVE MECHANICAL SKILLS AND THEY HAVE A COMMUNITY OF INTEREST WITH RESPECT TO WORKING HOURS.

9. CUOE IN EFFECT SEEKS TO CARVE OUT A SEPARATE BARGAINING UNIT WHICH IS ALSO A SEPARATE ADMINISTRATIVE UNIT WITHIN THE EMPLOYER'S ORGANIZATION. WHILE THE NATURE OF THE EMPLOYER'S ORGANIZATION IS A RELEVANT CONSIDERATION IN DETERMINING APPROPRIATE BARGAINING UNITS THAT IS ONLY ONE FACTOR. CANADIAN UNION OF PUBLIC EMPLOYEES V. THE BOARD OF HEALTH OF THE YORK-OSHAWA DISTRICT HEALTH UNIT (1969) JUNE OLRB MTHLY. REP. 340 AT 346. AN ADMINISTRATIVE UNIT OF AN EMPLOYER'S ORGANIZATION MAY SATISFY SOME CRITERIA FOR APPROPRIATENESS IN THE SENSE THAT IT IS A SEPARATE, IDENTIFIABLE AND FUNCTIONAL UNIT, BUT THOSE FACTORS ARE ALWAYS SUBJECT TO THE JUDGMENT THAT BARGAINING UNITS BASED ON SEPARATE ADMINISTRATIVE UNITS MAY UNDULY FRAGMENT AN EMPLOYER'S ORGANIZATION RESULTING IN SEPARATE REPRESENTATION BY A MULTIPLICITY OF ORGANIZATIONS FOR EACH ADMINISTRATIVE UNIT. THIS WOULD REQUIRE THE EMPLOYER TO ENTER INTO SEPARATE NEGOTIATIONS AND TO ADMINISTER SEPARATE COLLECTIVE AGREEMENTS AND TO TREAT ITS EMPLOYEES IN A VARIETY OF WAYS DEPENDING UPON THE NATURE OF THEIR REPRESENTATION.

10. IN THIS CASE THERE ARE OTHER FACTS WHICH MUST ALSO BE ASSESSED. THERE IS THE LENGTHY HISTORY OF BARGAINING BY EMPLOYEES IN A COMPREHENSIVE UNIT WHICH HAS RESULTED IN INDUSTRIAL PEACE AND WHICH HAS CAUSED THE HOSPITAL TO CENTRALLY ADMINISTER ITS PERSONNEL POLICY FOR AND ON BEHALF OF ALL EMPLOYEES. THERE IS ALSO THE FACTOR OF REPRESENTATION. IN THIS CASE NO ISSUE ARISES AS TO WHETHER THE EMPLOYEES ARE TO RECEIVE REPRESENTATION OR NOT. RATHER THE ISSUE IS WHICH UNION SHALL REPRESENT THE EMPLOYEES SINCE BOTH UNIONS HAVE REPRESENTATION WITHIN THE SKILLED TRADES GROUP.

11. AFTER CONSIDERING THE FACTS OF THIS CASE AND IN THE PARTICULAR CIRCUMSTANCES WE FIND THAT THE UNIT APPLIED FOR BY CUOE IS INAPPROPRIATE. HOWEVER, EVEN IF SUCH A UNIT WAS APPROPRIATE AFTER CONSIDERING THE EXTENT OF REPRESENTATION BY BOTH UNIONS IN THE SKILLED TRADES GROUP WE WOULD HAVE EXERCISED OUR DISCRETION AND CHOSEN THE MORE COMPREHENSIVE BARGAINING UNIT FOR THE REASONS WHICH WE GAVE IN THE BOARD OF HEALTH OF THE YORK-OSHAWA DISTRICT HEALTH UNIT CASE, SUPRA, AT P. 345. ACCORDINGLY THE APPLICATION BY CUOE IS DISMISSED.

12. HAVING REGARD TO THE REPRESENTATIONS OF THE PARTIES AND TO THEIR AGREEMENT WITH RESPECT TO CERTAIN ASPECTS OF THE BARGAINING UNIT AND TO THE PREVIOUS BARGAINING HISTORY IN THIS HOSPITAL, THE BOARD FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT TORONTO, SAVE AND EXCEPT PROFESSIONAL MEDICAL STAFF, GRADUATE NURSING STAFF, UNDERGRADUATE NURSES, REGISTERED NURSING ASSISTANTS, GRADUATE PHARMACISTS, UNDERGRADUATE PHARMACISTS, GRADUATE DIETICIANS, STUDENT DIETICIANS, TECHNICAL PERSONNEL, PHYSIOTHERAPISTS, OCCUPATIONAL THERAPISTS, OFFICE AND CLERICAL STAFF,

SUPERVISORS, FOREMEN AND ASSISTANT CHIEF ENGINEER AND PERSONS ABOVE THE RANK OF SUPERVISOR, FOREMAN AND ASSISTANT CHIEF ENGINEER, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS COVERED BY SUBSISTING COLLECTIVE AGREEMENTS, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

13. FOR THE PURPOSE OF CLARITY THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT CHAPLAINS, PHYSICISTS, SPEECH THERAPISTS, AUDIOLOGISTS, PSYCHOLOGISTS AND PSYCHOMETRISTS, SOCIAL WORKERS AND CASE ASSISTANTS, MEDICAL LIBRARIANS, MEDICAL RECORD LIBRARIANS AND REMEDIAL GYMNASTS ARE NOT INCLUDED IN THE BARGAINING UNIT.

14. FOR THE PURPOSE OF CLARITY THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT THE TERM "TECHNICAL PERSONNEL" INCLUDES TECHNOLOGISTS, TECHNICIANS AND ASSISTANTS IN THE FOLLOWING UNITS: MEDICAL LABORATORY, RADIOLOGY, RADIOTHERAPY, ELECTRO-ENCEPHALOGRAPHY, AUDIOLOGY, MEDICAL ENGINEERING, NUCLEAR MEDICINE, INHALATION THERAPY, HYPERBARIC CHAMBER, RENAL DIALYSIS, CLINICAL INVESTIGATION, PULMONARY FUNCTION, CARDIOVASCULAR INVESTIGATION, OPHTHALMOLOGY, VERTIGO, PACEMAKER CLINIC, PHARMACY AND CEREBRAL-VASCULAR; AND FURTHER INCLUDES HYPERBARIC CHAMBER CONTROLLERS, PERFUSIONISTS, MEDICAL PHOTOGRAPHERS AND TECHNICIANS, DENTAL HYGIENISTS, CHAIRSIDE ASSISTANTS AND X-RAY TECHNOLOGISTS IN THE DENTAL UNIT, OPERATING ROOM TECHNICIANS, AUDIO-VISUAL AID TECHNICIANS AND PERSONS IN TRAINING TO BECOME SUCH TECHNICAL PERSONNEL.

15. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN SIXTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON OCTOBER 21, 1971, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 92(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

16. A CERTIFICATE WILL ISSUE TO THE CUPE.

DECISION OF BOARD MEMBER J.E.C. ROBINSON, Q.C.: JANUARY 10, 1972.

1. WHILE I AM NOT PREPARED TO ADOPT ALL OF THE LANGUAGE AND REASONING OF MY COLLEAGUES, I DO AGREE WITH THEIR DISPOSITION OF THE APPLICATION OF CANADIAN UNION OF OPERATING ENGINEERS, AND WITH THE CERTIFICATION OF CANADIAN UNION OF PUBLIC EMPLOYEES FOR THE AGREED UNIT SET OUT IN THE DECISION OF MY COLLEAGUES.

944-71-R: H. M. ARNOTT, ET AL. (APPLICANT) V. LOCAL 1219, CANADIAN UNION OF PUBLIC EMPLOYEES (RESPONDENT #1) V. CANADIAN UNION OF PUBLIC EMPLOYEES (RESPONDENT #2) V. THE CORPORATION OF THE TOWN OF MARKHAM (INTERVENER).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS O. HODGES AND J. E. C. ROBINSON, Q.C.

APPEARANCES AT THE HEARING: HELENA M. ARNOTT FOR THE APPLICANT; J. A. RYDER, T. EDWARDS AND D. FLOOD FOR THE RESPONDENTS; K. G. SCOTT, H. C. T. CRISP AND J. P. SANDERSON FOR THE INTERVENER.

DECISION OF THE BOARD: JANUARY 10, 1972.

1. IN THE REPLY TO APPLICATION FOR DECLARATION TERMINATING BARGAINING RIGHTS THE RESPONDENT STATED IN PARAGRAPH 1(A) THAT THE CORRECT NAME OF RESPONDENT IS "CANADIAN UNION OF PUBLIC EMPLOYEES, ON ITS OWN BEHALF AND ON BEHALF OF ITS LOCAL 1219". THE REPLY ALSO REQUESTS THAT CANADIAN UNION OF PUBLIC EMPLOYEES BE ADDED AS A PARTY. AT THE HEARING, THIS REQUEST WAS MADE BY COUNSEL AND IS GRANTED BY THE BOARD. FOR REASONS WHICH WILL BECOME OBVIOUS LATER, HOWEVER, THE BOARD DIRECTS THAT THE STYLE OF CAUSE BE AMENDED AND IT IS HEREBY AMENDED BY ADDING "CANADIAN UNION OF PUBLIC EMPLOYEES" AS RESPONDENT #2.

2. THIS IS AN APPLICATION UNDER SECTION 52 (FORMERLY SECTION 45A) OF THE LABOUR RELATIONS ACT FOR A DECLARATION THAT RESPONDENT #1 NO LONGER REPRESENTS THE EMPLOYEES IN THE BARGAINING UNIT FOR WHICH IT IS THE BARGAINING AGENT.

3. SECTION 52(1) OF THE ACT IS AS FOLLOWS:

"WHERE AN EMPLOYER AND A TRADE UNION THAT HAS NOT BEEN CERTIFIED AS THE BARGAINING AGENT FOR A BARGAINING UNIT OF EMPLOYEES OF THE EMPLOYER ENTER INTO A COLLECTIVE AGREEMENT, OR A RECOGNITION AGREEMENT AS PROVIDED FOR IN SUBSECTION 3 OF SECTION 15, THE BOARD MAY, UPON THE APPLICATION OF ANY EMPLOYEE IN THE BARGAINING UNIT OR OF A TRADE UNION REPRESENTING ANY EMPLOYEE IN THE BARGAINING UNIT, DURING THE FIRST YEAR OF THE PERIOD OF TIME THAT THE FIRST COLLECTIVE AGREEMENT BETWEEN THEM IS IN OPERATION OR, IF NO COLLECTIVE AGREEMENT HAS BEEN ENTERED INTO, WITHIN ONE YEAR FROM THE SIGNING OF SUCH RECOGNITION AGREEMENT, DECLARE THAT THE TRADE UNION WAS NOT, AT THE TIME THE AGREE-

MENT WAS ENTERED INTO, ENTITLED TO REPRESENT THE EMPLOYEES IN THE BARGAINING UNIT."

4. THE BARGAINING UNIT SAID BY THE APPLICANT TO BE AFFECTED BY THE APPLICATION IS DESCRIBED AS FOLLOWS:

"ALL EMPLOYEES OF THE TOWN OF MARKHAM, EMPLOYED IN ITS OFFICE, CLERICAL AND TECHNICAL OPERATIONS, SAVE AND EXCEPT TOWN CLERK, DEPUTY TOWN CLERK, TOWN TREASURER, DEPUTY TOWN TREASURER, PLANNING DIRECTOR, TOWN ENGINEER, ASSISTANT TOWN ENGINEER, CHIEF BUILDING INSPECTOR, PRIVATE SECRETARY TO TOWN CLERK, PARKS MANAGER, ARENA MANAGER, PERSONNEL OFFICE, RECREATIONAL DIRECTOR."

5. THE RESPONDENTS STATE THAT THE BARGAINING UNIT AFFECTED IS DESCRIBED IN THE FOLLOWING TERMS:

"ALL EMPLOYEES OF THE CORPORATION OF THE TOWN OF MARKHAM EMPLOYED IN ITS WORKS DEPARTMENT, ITS PARKS DEPARTMENT, AND ITS OFFICE, CLERICAL AND TECHNICAL OPERATIONS SAVE AND EXCEPT THE TOWN CLERK, DEPUTY TOWN CLERK, TOWN TREASURER, PLANNING DIRECTOR, TOWN ENGINEER, ASSISTANT TOWN ENGINEER, CHIEF BUILDING INSPECTOR, PRIVATE SECRETARY TO THE TOWN CLERK, WATER WORKS SUPERINTENDENT, ASSISTANT ROADS SUPERINTENDENT, FLEET SUPERINTENDENT, AND PERSONS ABOVE THE RANK OF WATER WORKS SUPERINTENDENT, ASSISTANT ROADS SUPERINTENDENT AND FLEET SUPERINTENDENT."

6. UNDERLYING THE APPLICATION IS THE FACT THAT ON JANUARY 1ST, 1971, BY VIRTUE OF THE PROVISIONS OF THE REGIONAL MUNICIPALITY OF YORK ACT R.S.O. 1970, CHAPTER 50, A PORTION OF THE TOWNSHIP OF MARKHAM AND THE TOWN OF MARKHAM WERE ANNEXED AND BECAME THE CORPORATION OF THE TOWN OF MARKHAM AND THE FACT THAT FOLLOWING ANNEXATION, A MEMORANDUM OF AGREEMENT DATED THE 16TH DAY OF JUNE, 1971 WAS ENTERED INTO BY THE NEW CORPORATION AND LOCAL 1219 CANADIAN UNION OF PUBLIC EMPLOYEES.

7. THE RESPONDENTS CLAIM THAT THE BARGAINING RIGHTS THEY DEFEND IN THE PRESENT CASE ARE BASED UPON CERTIFICATES ISSUED BY THE ONTARIO LABOUR RELATIONS BOARD. THEY SUBMIT THAT SINCE SECTION 52(1), UNDER WHICH THIS APPLICATION IS BROUGHT, APPLIES ONLY TO SITUATIONS WHERE THE TRADE UNION CONCERNED HAS NOT BEEN CERTIFIED, (I.E., CASES OF VOLUNTARY RECOGNITION), THAT THE PRESENT APPLICATION IS ILL FOUNDED

AND OUGHT TO BE DISMISSED.

8. THE RESPONDENTS RELY UPON A CERTIFICATE OF THE BOARD DATED THE 5TH DAY OF MAY, 1969 IN WHICH THE BOARD CERTIFIED CANADIAN UNION OF PUBLIC EMPLOYEES AS BARGAINING AGENT OF ALL EMPLOYEES OF THE CORPORATION OF THE TOWNSHIP OF MARKHAM, EMPLOYED IN ITS OFFICE, CLERICAL AND TECHNICAL OPERATIONS, SAVE AND EXCEPT TOWNSHIP CLERK, DEPUTY TOWNSHIP CLERK, TOWNSHIP TREASURER, PLANNING DIRECTOR, TOWNSHIP ENGINEER, ASSISTANT TOWNSHIP ENGINEER, AND PRIVATE SECRETARY TO THE TOWNSHIP CLERK. THIS BARGAINING UNIT IS HEREINAFTER REFERRED TO AS "UNIT #1".

9. A SECOND CERTIFICATE REFERRED TO BY THE RESPONDENTS IS DATED THE 6TH DAY OF APRIL, 1970. IN THIS, THE BOARD CERTIFIED CANADIAN UNION OF PUBLIC EMPLOYEES AS BARGAINING AGENT OF ALL EMPLOYEES OF THE CORPORATION OF THE TOWNSHIP OF MARKHAM, IN THE TOWNSHIP OF MARKHAM, SAVE AND EXCEPT WATERWORKS SUPERINTENDENT, ASSISTANT ROADS SUPERINTENDENT, FLEET SUPERINTENDENT, PERSONS ABOVE THE RANK OF WATERWORKS SUPERINTENDENT, ASSISTANT ROADS SUPERINTENDENT AND FLEET SUPERINTENDENT, OFFICE CLERICAL AND TECHNICAL STAFF. THIS BARGAINING UNIT IS HEREINAFTER REFERRED TO AS "UNIT #2".

10. THE THIRD CERTIFICATE PUT FORWARD BY THE RESPONDENTS CERTIFIES CANADIAN UNION OF PUBLIC EMPLOYEES AS BARGAINING AGENT OF ALL EMPLOYEES OF THE CORPORATION OF THE TOWN OF MARKHAM EMPLOYED IN ITS WORKS DEPARTMENT AND ITS PARKS DEPARTMENT, SAVE AND EXCEPT SUPERINTENDENT, PERSONS ABOVE THE RANK OF SUPERINTENDENT AND OFFICE STAFF. IT IS DATED THE 22ND DAY OF OCTOBER, 1970. THIS BARGAINING UNIT IS HEREINAFTER REFERRED TO AS "UNIT #3".

11. A COLLECTIVE AGREEMENT WITH RESPECT TO THE EMPLOYEES OF THE CORPORATION OF THE TOWNSHIP OF MARKHAM DESCRIBED IN THE CERTIFICATE OF MAY 5, 1969, UNIT #1, I.E. THE "INSIDE" EMPLOYEES, WAS ENTERED INTO BY THE TOWNSHIP AND CANADIAN UNION OF PUBLIC EMPLOYEES, ON ITS OWN BEHALF AND ON BEHALF OF ITS LOCAL 1219. THE TERM OF THIS AGREEMENT PURPORTS TO COVER THE PERIOD FROM JANUARY 1ST, 1970 TO DECEMBER 31ST, 1970. IT IS DATED AT TORONTO, THE 12TH DAY OF MAY, 1970.

12. ANOTHER COLLECTIVE AGREEMENT WITH REFERENCE TO THE EMPLOYEES COVERED BY THE CERTIFICATE DATED APRIL 6, 1970, UNIT #2, I.E. THE "OUTSIDE" EMPLOYEES, WAS ENTERED INTO BETWEEN THE CORPORATION OF THE TOWNSHIP OF MARKHAM AND CANADIAN UNION OF PUBLIC EMPLOYEES ON ITS OWN BEHALF AND ON BEHALF OF ITS LOCAL 1219. THIS AGREEMENT PURPORTS TO BE EFFECTIVE FROM JANUARY 1ST, 1970 TO DECEMBER 31ST, 1970 AND WAS SIGNED IN OCTOBER 1970.

13. NO COLLECTIVE AGREEMENT WAS SIGNED PRIOR TO ANNEXATION WITH RESPECT TO THE EMPLOYEES OF THE FORMER THE CORPORATION OF THE TOWN OF

MARKHAM REFERRED TO IN THE CERTIFICATE ISSUED TO CANADIAN UNION OF PUBLIC EMPLOYEES ON OCTOBER 22, 1970, UNIT #3.

14. THERE WAS NO EVIDENCE OR ARGUMENT THAT ANY CERTIFICATE HAD BEEN ISSUED WHICH COVERED THE OFFICE, CLERICAL AND TECHNICAL EMPLOYEES, I.E. THE "INSIDE EMPLOYEES" OF THE FORMER THE CORPORATION OF THE TOWN OF MARKHAM. THESE PERSONS ARE HEREINAFTER REFERRED TO AS BARGAINING UNIT #4.

15. THERE ARE ALSO THE EMPLOYEES WITH WHOM THE APPLICANT IS CONCERNED AND WHOM RESPONDENT #1 AND THE INTERVENER HAVE SOUGHT TO SWEEP INTO A BARGAINING UNIT REFERRED TO IN A RESOLUTION OF MARKHAM TOWN COUNCIL DATED MARCH 9, 1971 AND IN THE "MEMORANDUM OF AGREEMENT" REFERRED TO IN PARAGRAPH 6 WHICH PURPORTS TO BE A COLLECTIVE AGREEMENT. THE DESCRIPTION OF THE BARGAINING UNIT SET OUT IN THESE DOCUMENTS IS SIMPLY "THE INSIDE EMPLOYEES AND THE OUTSIDE EMPLOYEES".

16. IT IS PERHAPS APPROPRIATE AT THIS TIME TO NOTE THAT THE RESOLUTION AND THE PURPORTED AGREEMENT REFERRED TO ABOVE INVOLVE ONLY LOCAL 1219 OF CANADIAN UNION OF PUBLIC EMPLOYEES AND MAKE NO REFERENCE WHATSOEVER TO CANADIAN UNION OF PUBLIC EMPLOYEES ITSELF. IT WOULD APPEAR THAT IT IS FOR THIS REASON THAT THE APPLICANT NAMED ONLY LOCAL 1219 AND NOT THE PARENT AS RESPONDENT IN THIS APPLICATION. THIS OBSERVATION LEADS TO A FURTHER LOOK AT THE CERTIFICATES RELIED UPON BY THE RESPONDENTS AS SUPPORT FOR THE CONTENTION THAT SECTION 52 HAS NO APPLICATION IN THIS MATTER.

17. THE CERTIFICATES WERE ALL ISSUED SIMPLY IN THE NAME OF CANADIAN UNION OF PUBLIC EMPLOYEES. THE TWO COLLECTIVE AGREEMENTS MADE MAY 12, 1970 AND OCTOBER 13, 1970 RESPECTIVELY INCLUDE CANADIAN UNION OF PUBLIC EMPLOYEES ON ITS OWN BEHALF SO THAT THE BARGAINING RIGHTS OF THAT BODY ARE TRACEABLE FROM CERTIFICATION TO DATE OF ANNEXATION. THERE CAN BE NO DISPUTE THAT THE BARGAINING RIGHTS OF CANADIAN UNION OF PUBLIC EMPLOYEES BASED UPON THE CERTIFICATE COVERING EMPLOYEES OF WORKS AND PARKS DEPARTMENTS OF THE TOWN OF MARKHAM IN OCTOBER OF 1970 WERE IN FULL FORCE AND EFFECT ON THE DATE OF THE ANNEXATION. THE ABSENCE OF A COLLECTIVE AGREEMENT IN THAT AREA DOES NOT, OF COURSE, DETRACT FROM THE RIGHTS ESTABLISHED BY THE CERTIFICATE.

18. IT IS CLEAR THEN THAT AT THE TIME OF ANNEXATION (AND AT THE DATE OF THE PRESENT APPLICATION), CANADIAN UNION OF PUBLIC EMPLOYEES HAD BEEN CERTIFIED AS BARGAINING AGENT FOR THREE OF THE FOUR BARGAINING UNITS WITH WHICH WE ARE HERE CONCERNED. LOCAL 1219, ON THE OTHER HAND, HAS NOT BEEN CERTIFIED WITH RESPECT TO ANY OF THE UNITS UNDER CONSIDERATION. LOCAL 1219 IS FIRST MENTIONED IN THE COLLECTIVE AGREEMENTS WHERE THE AGREEMENTS STATE CANADIAN UNION OF PUBLIC EMPLOYEES BARGAINS ON ITS OWN BEHALF AND ON BEHALF OF LOCAL 1219.

19. IT WOULD APPEAR, THEREFORE, THAT WHATEVER MAY BE THE POSITION OF LOCAL 1219, SECTION 52 CAN HAVE NO APPLICATION TO CANADIAN UNION OF PUBLIC EMPLOYEES WITH RESPECT TO UNITS #1, #2 AND #3 BY REASON OF THE FACT THAT IT HAD BEEN CERTIFIED AS BARGAINING AGENTS FOR THOSE UNITS.

20. WE TURN NOW TO A CONSIDERATION OF THE POSITION OF LOCAL 1219 AT THE TIME OF THE ANNEXATION.

21. IT WAS SAID BY THE RESPONDENTS THAT THE RESOLUTION PASSED BY THE COUNCIL OF THE TOWN OF MARKHAM ON MARCH 9, 1971, WHILE MAKING USE OF THE TERM "VOLUNTARY RECOGNITION", WAS IN EFFECT NOTHING MORE THAN A RECOGNITION OF RIGHTS PRESERVED FOR LOCAL 1219 BY THE PROVISIONS OF SECTION 55 OF THE ACT. THE INFERENCE WAS INVITED THAT REFERENCE TO THE FORMER COLLECTIVE AGREEMENTS CONTAINED IN THE RESOLUTION LENDS SUPPORT TO THE ARGUMENT THAT THE RESOLUTION CONFIRMED AN OLD RATHER THAN RECOGNIZED A NEW BARGAINING RIGHT.

22. THE RESOLUTION EMPLOYED THE FOLLOWING LANGUAGE:

"THAT EFFECTIVE THE DATE HEREOF, THIS COUNCIL DOES HEREBY VOLUNTARILY RECOGNIZE C.U.P.E. LOCAL 1219 AS THE SOLE BARGAINING AGENT FOR THE INSIDE AND OUTSIDE EMPLOYEES OF THE TOWN OF MARKHAM BEING THOSE SO DESIGNATED IN THE FORMER AGREEMENTS BETWEEN THE TOWNSHIP OF MARKHAM AND SAID LOCAL 1219."

23. THE COLLECTIVE AGREEMENTS REFERRED TO IN THE RESOLUTION ARE THOSE MENTIONED IN PARAGRAPHS 11 AND 12 HEREOF. THEY ATTEMPT TO INCLUDE LOCAL 1219 AS A PARTY TO THE AGREEMENT EMBRACED BY THE TERM "UNION" AS THEREAFTER USED IN THE AGREEMENT. IT IS TO BE RECOLLECTED THAT ALTHOUGH BOTH AGREEMENTS PURPORT TO BE FOR A TERM OF ONE YEAR, I.E. FROM JANUARY 1ST TO DECEMBER 31ST, 1970, ONE WAS EXECUTED ON MAY 12TH AND THE OTHER ON OCTOBER 13TH, 1970. THE PRESENT APPLICATION IS DATED SEPTEMBER 20TH, 1971.

24. IT IS WELL ESTABLISHED THAT IN PROCEEDINGS UNDER THE ACT THE BOARD HAS CONSISTENTLY RECOGNIZED THAT A LOCAL UNION AND ITS PARENT ORGANIZATION ARE TWO DISTINCT ENTITIES. IT FOLLOWS THAT IN THE PRESENT CASE, LOCAL 1219 CANNOT BE SAID TO HAVE BEEN CERTIFIED BY REASON OF THE CERTIFICATES GRANTED TO CANADIAN UNION OF PUBLIC EMPLOYEES. ITS APPEARANCE ON THE COLLECTIVE AGREEMENT TOGETHER WITH CANADIAN UNION OF PUBLIC EMPLOYEES CANNOT, THEREFORE, BE SAID TO RENDER IT A TRADE UNION THAT HAS BEEN CERTIFIED AS A BARGAINING AGENT WITHIN THE MEANING OF SECTION 52 OF THE ACT. RATHER, IT WOULD APPEAR THAT THE INCLUSION OF LOCAL 1219 IN THE COLLECTIVE AGREEMENT INDICATES THAT THE TOWNSHIP CONCERNED VOLUNTARILY RECOGNIZED THE LOCAL AT THE TIME THE AGREEMENTS

WERE SIGNED AS SOMETHING IN THE NATURE OF A JOINT BARGAINING AGENT WITH CANADIAN UNION OF PUBLIC EMPLOYEES. THE AGREEMENT COVERING THE OUTSIDE EMPLOYEES OF THE FORMER TOWNSHIP OF MARKHAM, I.E. BARGAINING UNIT #2, AS ALREADY NOTED, WAS NOT ENTERED INTO UNTIL OCTOBER OF 1970. WITH RESPECT TO THIS LATTER AGREEMENT, THE ONUS OF ESTABLISHING THAT LOCAL 1219 OF CANADIAN UNION OF PUBLIC EMPLOYEES WAS ENTITLED TO REPRESENT THE EMPLOYEES IN THE BARGAINING UNIT AT THE TIME THE AGREEMENT WAS ENTERED WOULD FALL, IN AN APPLICATION, UNDER SECTION 52(3) OF THE ACT, UPON THE PARTIES TO THAT AGREEMENT.

25. INSOFAR AS THE AGREEMENT ENTERED INTO ON MAY 12TH, 1970 IS CONCERNED, WHILE IT WAS IN EFFECT AT THE TIME OF THE ANNEXATION, THE LIMITATION OF ONE YEAR REFERRED TO IN SECTION 52(1) OF THE ACT HAD EXPIRED PRIOR TO THE DATE OF THE APPLICATION.

26. THERE IS NOTHING BEFORE THE BOARD, HOWEVER, TO INDICATE WHETHER ANY OF THE EMPLOYEES CONCERNED WERE MEMBERS OF LOCAL 1219 AT ANY TIME MATERIAL TO THIS APPLICATION.

27. AT THE TIME OF THE ANNEXATION, THEREFORE, THE PRECISE STATUS OF LOCAL 1219 AS A UNION HAVING BARGAINING RIGHTS FOR THE EMPLOYEES IN THE UNITS COVERED BY THE AGREEMENTS IS SHROUDED WITH DOUBT.

28. THIS IS PARTICULARLY SO SINCE THE RIGHTS ACQUIRED BY CANADIAN UNION OF PUBLIC EMPLOYEES UNDER THE CERTIFICATES HAVE CONTINUED WITHOUT DIMINUTION THROUGHOUT. WE WERE NOT MADE AWARE OF ANY CLAIM TO SUCCESSOR RIGHTS ON THE PART OF THE LOCAL UNDER SECTION 54 OF THE ACT. IT WOULD APPEAR, THEREFORE, THAT WHATEVER COLOUR OF RIGHT IT MIGHT LAY CLAIM TO BY VIRTUE OF THE INCLUSION OF ITS TITLE IN THE COLLECTIVE AGREEMENTS, LOCAL 1219 CAN CLAIM NO RIGHTS WHATSOEVER, AS OF THE DATE OF THE ANNEXATION, WITH RESPECT TO ANY EMPLOYEES NOT COVERED BY THOSE AGREEMENTS.

29. THE MEMORANDUM OF AGREEMENT REFERRED TO IN PARAGRAPH 15 OF THIS DECISION AND WHICH, OF COURSE, WAS SIGNED SUBSEQUENT TO THE DATE OF ANNEXATION, WAS SAID BY ALL PARTIES TO CONSTITUTE A COLLECTIVE AGREEMENT BETWEEN THE CORPORATION OF THE TOWN OF MARKHAM AND THE CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 1219. IT IS EMPHASIZED THAT THE MEMORANDUM MAKES NO DIRECT REFERENCE TO CANADIAN UNION OF PUBLIC EMPLOYEES OR ITS BARGAINING RIGHTS AND IS SIGNED ON BEHALF OF LOCAL 1219 ONLY.

30. WHETHER THE MEMORANDUM BE VIEWED AS A COLLECTIVE AGREEMENT OR AS A RECOGNITION AGREEMENT AS PROVIDED FOR IN SUBSECTION 3 OF SECTION 15 OF THE ACT, IT IS CLEARLY AN AGREEMENT BETWEEN AN EMPLOYER AND WHAT PURPORTS TO BE A TRADE UNION WHICH HAS NOT BEEN CERTIFIED AS BARGAINING AGENT FOR A BARGAINING UNIT OF EMPLOYEES OF THE EMPLOYER.

PURSUANT TO THE PROVISIONS OF SECTION 52 SUBSECTION 3, THE ONUS OF ESTABLISHING THAT LOCAL 1219 WAS ENTITLED TO REPRESENT THE EMPLOYEES IN THE BARGAINING UNIT AT THE TIME THE MEMORANDUM WAS ENTERED INTO, IF THE MATTER BE VIEWED PURELY AS ONE FALLING WITHIN THE AMBIT OF SECTION 52, FALLS UPON THE PARTIES TO THAT AGREEMENT.

31. THE RESPONDENTS, HOWEVER, ARGUE THAT THE MEMORANDUM OPERATES AS CONFIRMATION OF BARGAINING RIGHTS PRESERVED TO THEM BY VIRTUE OF THE PROVISIONS OF SECTION 55 SUBSECTION 11 OF THE LABOUR RELATIONS ACT. SECTION 55 SUBSECTION 11 PROVIDES AS FOLLOWS:

WHERE ONE OR MORE MUNICIPALITIES AS DEFINED IN THE DEPARTMENT OF MUNICIPAL AFFAIRS ACT IS ERRECTED INTO ANOTHER MUNICIPALITY, OR TWO OR MORE SUCH MUNICIPALITIES ARE AMALGAMATED, UNITED OR OTHERWISE JOINED TOGETHER, OR ALL OR PART OF ONE SUCH MUNICIPALITY IS ANNEXED, ATTACHED OR ADDED TO ANOTHER SUCH MUNICIPALITY, THE EMPLOYEES OF THE MUNICIPALITIES CONCERNED SHALL BE DEEMED TO HAVE INTERMINGLED, AND,

- (A) THE BOARD MAY EXERCISE THE LIKE POWERS AS IT MAY EXERCISE UNDER SUBSECTIONS 6 AND 8 WITH RESPECT TO THE SALE OF A BUSINESS UNDER THIS SECTION;
- (B) THE NEW OR ENLARGED MUNICIPALITY HAS THE LIKE RIGHTS AND OBLIGATIONS AS A PERSON TO WHOM A BUSINESS IS SOLD UNDER THIS SECTION WHO INTERMINGLES THE EMPLOYEES OF ONE OF HIS BUSINESSES WITH THOSE OF ANOTHER OF HIS BUSINESSES; AND
- (C) ANY TRADE UNION OR COUNCIL OF TRADE UNIONS CONCERNED HAS THE LIKE RIGHTS AND OBLIGATIONS AS IT WOULD HAVE IN THE CASE OF THE INTERMINGLING OF EMPLOYEES IN TWO OR MORE BUSINESSES UNDER THIS SECTION."

32. WITH RESPECT TO THIS LATTER POINT THE INTERVENER SUBMITTED THAT THE BOARD WAS NOT ENTITLED TO MAKE A DECISION UNDER SECTION 55 UNLESS AND UNTIL A FORMAL APPLICATION WAS BROUGHT UNDER THAT SECTION. INsofar AS THAT SUBMISSION IS CONCERNED, WE WOULD REFER TO THE DECISION OF THE BOARD IN THE NORTH BAY BOARD OF EDUCATION CASE, OLRB MONTHLY REPORT JULY 1969 P. 489 WHERE THE FOLLOWING STATEMENT IS SET OUT:

".....WE ARE OF THE BELIEF THAT THE EXISTENCE IN ANY PROCEEDINGS BEFORE THE BOARD, OF THE

STATE OF FACTS SET OUT IN SECTION 47A (10) IS QUITE SUFFICIENT TO ENABLE THE BOARD TO EXERCISE THE POWERS OUTLINED THEREIN AND THAT NEITHER THE EXISTENCE NOR THE EXERCISE OF THOSE POWERS REQUIRES THE IMPETUS OF AN APPLICATION MADE WITH SPECIFIC REFERENCE TO SECTION 47A. (SEE GENAIRE LIMITED V. INTERNATIONAL ASSOCIATION OF MACHINISTS AND ONTARIO LABOUR RELATIONS BOARD (1958) 14 DLR (2d) 201 AND REGINA V. LRB (ONT) EX PARTE BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION LOCAL 268 69 CLLC ¶ 14, 181)".

33. IN THE PRESENT CASE, THERE IS NO DISPUTE WITH RESPECT TO THE STATEMENT ON ANNEXATION SET OUT IN PARAGRAPH 6 OF THIS DECISION SO THAT, HAVING IN MIND THE DECISION OF THE BOARD IN THE NORTH BAY BOARD OF EDUCATION (SUPRA), WE HAVE NO HESITATION IN SAYING THAT IT IS PROPER TO TAKE INTO CONSIDERATION THE PROVISIONS OF SECTION 55(11) [FORMERLY SECTION 47A(10)] OF THE ACT IN REACHING A DECISION IN THE PRESENT CIRCUMSTANCES.

34. THE FACT OF ANNEXATION HOWEVER DOES NOTHING TO ENHANCE THE POSITION OF LOCAL 1219 INSOFAR AS THE PROVISIONS OF SECTION 52 ARE CONCERNED. THE LOCAL CAN CARRY FORWARD INTO THE NEW SITUATION ONLY THE STATUS IT HAD AT THE DATE OF THE ANNEXATION.

35. IT IS CLEAR THAT ON THE DATE OF ANNEXATION, LOCAL 1219 WAS NOT A UNION THAT HAD BEEN CERTIFIED AS BARGAINING AGENT FOR ANY EMPLOYEES OF THE FORMER OR PRESENT CORPORATIONS INVOLVED IN THE PRESENT CASE. THE MEMORANDUM OF AGREEMENT OF JUNE 16, 1971 CANNOT BE SAID TO CONFIRM RIGHTS WHICH DID NOT IN FACT EXIST.

36. IN VIEW OF THE PROVISIONS OF SECTION 52(3) THE ONUS OF ESTABLISHING THAT LOCAL 1219 WAS ENTITLED TO REPRESENT EMPLOYEES IN THE BARGAINING UNIT SET OUT IN THE PURPORTED COLLECTIVE AGREEMENT OF JUNE 16TH, ENTITLED MEMORANDUM OF AGREEMENT RESTS UPON THE PARTIES TO THAT AGREEMENT.

37. FOR THE PURPOSE OF CLARITY WE WOULD REITERATE THAT C.U.P.E. APPEARS NOT TO HAVE BEEN A PARTY TO THE MEMORANDUM OF AGREEMENT WHICH WAS ATTACKED IN THIS APPLICATION AND ITS RIGHTS EXTANT AT THE DATE OF ANNEXATION ARE NOT IN JEOPARDY BY REASON OF THAT APPLICATION.

38. IN THE EVENT THAT THE PARTIES TO THE MEMORANDUM OF AGREEMENT OF JUNE 16, 1971 WISH TO DISCHARGE THE ONUS REFERRED TO ABOVE, THE MATTER IS REFERRED TO THE REGISTRAR TO LIST FOR CONTINUATION OF HEARING TO ENABLE THE PARTIES TO ADDUCE SUCH EVIDENCE AND MAKE SUCH REPRESENTATIONS

AS THEY MAY DESIRE WITH RESPECT TO DISCHARGING THE AFOREMENTIONED ONUS.

39. THE MATTER IS REFERRED TO THE REGISTRAR.

97-70-R: INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL UNION 1687 (APPLICANT) v. EXCELLENCE ELECTRICAL CONSTRUCTION (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: R. A. FURNESS, VICE-CHAIRMAN AND BOARD MEMBERS E. BOYER AND F. W. MURRAY.

APPEARANCES AT THE HEARING: R. KOSKIE AND L. POPOVITCH FOR THE APPLICANT; WILLIAM F. FITZGERALD AND KURT MELHORN FOR THE RESPONDENT; JOSEF PILLMANN, JACQUES BEAUPRE AND ANTO GALIC FOR THE OBJECTORS.

DECISION OF THE BOARD: JANUARY 10, 1972.

1. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(N) [FORMERLY SECTION 1(1)(J)] OF THE LABOUR RELATIONS ACT.

2. THE BOARD FURTHER FINDS THAT THIS IS AN APPLICATION FOR CERTIFICATION WITHIN THE MEANING OF SECTION 108 [FORMERLY SECTION 92] OF THE LABOUR RELATIONS ACT.

3. ON MARCH 18, 1971, THE BOARD APPOINTED AN EXAMINER IN THIS MATTER TO INQUIRE INTO AND REPORT TO IT ON THE LIST AND COMPOSITION OF THE BARGAINING UNIT. THE EXAMINER ISSUED HIS REPORT IN THIS MATTER ON MARCH 31, 1971. HAVING REGARD TO THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER AND TO THE REPRESENTATIONS OF THE PARTIES, THE BOARD ANNOUNCED TO THE PARTIES AT THE HEARING THAT IT DETERMINED THAT THERE WERE THIRTEEN PERSONS AT WORK FOR THE RESPONDENT ON MARCH 9, 1971, THE DATE OF THE MAKING OF THIS APPLICATION FOR CERTIFICATION, IN THE BARGAINING UNIT CLAIMED BY THE APPLICANT TO BE APPROPRIATE FOR COLLECTIVE BARGAINING, VIZ.,

ALL ELECTRICIANS AND ELECTRICIANS' APPRENTICES
IN THE EMPLOY OF EXCELLENCE ELECTRIC CONSTRUCTION
COMPANY WITHIN A RADIUS OF 35 MILES FROM THE CITY
OF SUDBURY, FEDERAL BUILDING, SAVE AND EXCEPT
NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK
OF NON-WORKING FOREMAN.

4. AFTER ENTERTAINING THE REPRESENTATIONS OF THE PARTIES ON THE APPROPRIATE BARGAINING UNIT, THE BOARD ANNOUNCED AT THE HEARING THAT THE BARGAINING UNIT CLAIMED BY THE APPLICANT TO BE APPROPRIATE

FOR COLLECTIVE BARGAINING WAS THE UNIT NORMALLY GRANTED BY THE BOARD IN THE CIRCUMSTANCES OF THIS APPLICATION. THE BOARD ANNOUNCED, FIRSTLY, THAT THE APPLICANT HAD FILED EVIDENCE OF MEMBERSHIP ON BEHALF OF TEN OF THE THIRTEEN PERSONS REFERRED TO IN PARAGRAPH 3 HEREIN, AND, SECONDLY, THAT THREE HAS BEEN FILED WITH THE BOARD TEN INDIVIDUAL STATEMENTS OF DESIRE IN OPPOSITION TO THIS APPLICATION FOR CERTIFICATION. THE BOARD FURTHER INFORMED THE PARTIES THAT THE NAMES OF SIX OF THE PERSONS WHO HAD EXECUTED STATEMENTS OF DESIRE IN OPPOSITION TO THIS APPLICATION APPEARED ON THE LIST OF THIRTEEN EMPLOYEES DETERMINED BY THE BOARD AND REFERRED TO IN PARAGRAPH 3 HEREIN AND THAT THE APPLICANT HAD FILED EVIDENCE OF MEMBERSHIP IN THIS APPLICATION WITH RESPECT TO THREE OF THESE SIX PERSONS. SINCE THIS REDUCED THE UNCONTESTED EVIDENCE OF MEMBERSHIP FILED BY THE APPLICANT TO LESS THAN THAT REQUIRED FOR OUTRIGHT CERTIFICATION, THE BOARD ANNOUNCED THAT IT WAS NECESSARY FOR THE BOARD TO INQUIRE INTO THE ORIGINATION, PREPARATION AND CIRCULATION OF THE STATEMENTS OF DESIRE FILED IN OPPOSITION TO THIS APPLICATION.

5. JOSEF PILLMAN WAS THE ONLY WITNESS WHO TESTIFIED BEFORE THE BOARD ON BEHALF OF THE OBJECTORS. AT THE CONCLUSION OF THIS EVIDENCE PRESENTED BY OBJECTORS, THE BOARD INFORMED THE PARTIES THAT THE OBJECTORS HAD NOT PRESENTED EVIDENCE TO THE BOARD WITH RESPECT TO THE CIRCUMSTANCES UNDER WHICH THE THREE PERSONS, ON WHOSE BEHALF THE OBJECTORS HAD FILED STATEMENTS OF DESIRE IN OPPOSITION TO THIS APPLICATION AND WITH RESPECT TO WHOM THE APPLICATION HAD FILED EVIDENCE OF MEMBERSHIP, HAD EXECUTED THEIR STATEMENTS OF DESIRE. THE BOARD THEREFORE RULED THAT ON THE BASIS OF THE EVIDENCE ADDUCED BEFORE IT, THE STATEMENTS OF DESIRE FILED IN OPPOSITION TO THIS APPLICATION DID NOT IN THE CIRCUMSTANCES CAST DOUBT UPON THE EVIDENCE OF MEMBERSHIP FILED BY THE APPLICANT SO AS TO CAUSE THE BOARD TO DIRECT A REPRESENTATION VOTE IN THIS MATTER. THE BOARD FURTHER RULED THAT HAVING REGARD TO THE FOREGOING IT WAS NOT NECESSARY FOR THE BOARD TO INQUIRE INTO THE ALLEGATIONS OF IRREGULAR OR IMPROPER CONDUCT FILED BY THE APPLICANT AGAINST THE RESPONDENT IN CONNECTION WITH THE ORIGINATION, PREPARATION AND CIRCULATION OF THE TEN STATEMENTS OF DESIRE FILED IN OPPOSITION TO THIS APPLICATION.

6. AT THIS POINT THE APPLICANT ALLEGED THAT JOSEF PILLMAN HAD GIVEN UNTRUTHFUL TESTIMONY BEFORE THE BOARD AND SOUGHT TO HAVE THE BOARD HEAR TESTIMONY FROM THE APPLICANT IN THIS REGARD. IT WAS THIS POSITION OF THE APPLICANT THAT IF THE BOARD HEARD TESTIMONY FROM THE APPLICANT THEN THIS WOULD ESTABLISH THAT JOSEF PILLMAN HAD COMMITTED PERJURY BEFORE THE BOARD IN THIS PROCEEDING. THE APPLICANT FURTHER ADOPTED THE POSITION THAT TWO ENTITIES KNOWN AS UNION ELECTRIC AND UNDERGROUND MINING ELECTRIC BE TREATED TOGETHER WITH THE RESPONDENT AS CONSTITUTING A SINGLE EMPLOYER UNDER SECTION 1(4) OF THE LABOUR RELATIONS ACT. THIS LATTER POINT HAD BEEN RAISED BY THE APPLICANT FOR THE FIRST TIME IN A LETTER TO THE BOARD RECEIVED ON APRIL 13, 1971

SOME THREE DAYS PRIOR TO THE HEARING IN THIS MATTER. THE BOARD DIRECTED THE PARTIES TO FILE WRITTEN SUBMISSIONS ON THESE TWO POINTS RAISED BY THE APPLICANT.

7. IN JUNE 1971, THE APPLICANT FILED ITS WRITTEN SUBMISSIONS WITH THE BOARD IN CONNECTION WITH THE QUESTION OF THE ALLEGED PERJURY OF JOSEF PILLMAN, THE RELATION OF SECTION 1(4) OF THE LABOUR RELATIONS ACT TO THIS APPLICATION AND, FOR THE FIRST TIME, RAISED AN ISSUE IN CONNECTION WITH THE APPLICABILITY OF SECTION 55 (FORMERLY SECTION 47A) OF THE LABOUR RELATIONS ACT TO THIS APPLICATION FOR CERTIFICATION. IN A LETTER OCTOBER 21, 1971 THE APPLICANT REQUESTED THE BOARD FOR THE FIRST TIME TO ADD UNION ELECTRIC AND UNDERGROUND MINING ELECTRIC AS PARTIES TO THIS APPLICATION FOR CERTIFICATION PURSUANT TO SECTION 54 OF THE BOARD'S RULES OF PROCEDURE.

8. CONSIDERING, FIRSTLY, THE ALLEGED FALSE EVIDENCE GIVEN BY JOSEF PILLMAN. THE BOARD HEARD THE TESTIMONY OF PILLMAN AND DETERMINED THAT THIS EVIDENCE GIVEN ON BEHALF OF OBJECTORS DID NOT CAST DOUBT ON THE EVIDENCE OF MEMBERSHIP FILED BY THE APPLICANT. HOWEVER, IT IS THE POSITION OF THE APPLICANT THAT IT DESIRES TO PRESENT EVIDENCE BEFORE THE BOARD IN ORDER TO ESTABLISH ITS ALLEGATION THAT PILLMAN GAVE UN-TRUTHFUL EVIDENCE BEFORE THE BOARD. IN THE JAY ZEE FOOD PRODUCTS LIMITED CASE, O.L.R.B. MONTHLY REPORT JULY 1969, P. 513, THE BOARD STRONGLY DISAPPROVED OF THE ADMITTED FABRICATED TESTIMONY OF A WITNESS, INDICATED THAT IT WOULD NOT TOLERATE FABRICATED TESTIMONY AND THAT IF A SIMILAR SITUATION AROSE, IT MIGHT RESULT IN THE BOARD REFERRING THE MATTER TO THE APPROPRIATE AUTHORITIES. HOWEVER, THIS IS NOT THE SITUATION IN THE INSTANT CASE, FOR UNLIKE THE JAY ZEE CASE (SUPRA), THE ALLEGED FALSE TESTIMONY HAS NOT BEEN ESTABLISHED BEFORE THE BOARD AND IT IS NOT THE FUNCTION OF THE BOARD TO PURSUE A LINE OF INQUIRY, AFTER ITS RELEVANCE TO A PROCEEDING BEFORE IT HAS BEEN CONSIDERED BY THE BOARD, SOLELY FOR THE PURPOSE OF ESTABLISHING WHETHER A WITNESS HAS GIVEN FALSE EVIDENCE BEFORE THE BOARD WITHIN VIEW TO THE LAYING OF A POSSIBLE CHARGE OF PERJURY AGAINST SUCH WITNESS. THE REQUEST OF THE APPLICANT TO INTRODUCE EVIDENCE BEFORE THE BOARD IN SUPPORT OF ITS ALLEGATION THAT PILLMAN GAVE FALSE EVIDENCE BEFORE THE BOARD IS ACCORDINGLY DENIED.

9. TURNING, SECONDLY, TO THE SUBMISSIONS RAISED WITH REGARD TO THE APPLICATION OF SECTION 1(4) OF THE LABOUR RELATIONS ACT TO THIS APPLICATION FOR CERTIFICATION. THIS APPLICATION FOR CERTIFICATION WAS FILED ON MARCH 9, 1971, AND, WHILE SOME OF THE FACTS ALLEGED BY THE APPLICANT WITH RESPECT TO THE CREATION AND REGISTRATION OF UNION ELECTRIC AND UNDERGROUND MINES ELECTRIC TOOK PLACE AS LATE AS MARCH 1971, THE BOARD NOTES THAT THESE TWO ENTITIES WERE NOT MADE A PARTY TO THIS APPLICATION WHEN IT WAS FILED BY THE APPLICANT, WERE THEREFORE NOT PRESENT BEFORE THE EXAMINER, AND THAT THE APPLICANT'S REQUEST TO HAVE THESE TWO ENTITIES MADE PARTIES TO THIS PROCEEDING BEFORE THE BOARD WAS NOT

UNTIL OCTOBER 1971, MORE THAN SEVEN MONTHS AFTER THE FILING OF THIS APPLICANT AND SOME SIX MONTHS AFTER THE APPLICANT FIRST RAISED THE APPLICABILITY OF SECTION 1(4) OF THE LABOUR RELATIONS ACT TO THIS APPLICATION.

10. UNION ELECTRIC AND UNDERGROUND MINING ELECTRIC WERE NOT AT ANY TIME GIVE NOTICE OF THIS APPLICATION AND NEITHER WERE ANY EMPLOYEES OF THESE TWO ENTITIES WHO MIGHT BE AFFECTED BY THIS APPLICATION GIVEN NOTICE OF THIS APPLICATION. IN ADDITION, THE APPLICANT WAS APPARENTLY CONTENT TO HAVE THE DETERMINATION OF THE LIST OF EMPLOYEES MADE WITH REFERENCE ONLY TO THE EMPLOYEES OF THE RESPONDENT ON THE DATE OF THE MAKING OF THIS APPLICATION. IF THE BOARD WERE TO ACCEDE TO THE WISHES OF THE APPLICANT IT WOULD BE SANCTIONING THE DELAY OF THE APPLICANT IN ASKING THAT THESE TWO ENTITIES TO BE MADE PARTIES TO THIS PROCEEDING AND IT WOULD NECESSITATE THE COMMENCEMENT OF THIS APPLICATION AGAIN SO AS TO AFFORD ALL THE POTENTIALLY AFFECTED PERSONS AN OPPORTUNITY TO MAKE THEIR REPRESENTATIONS TO THE BOARD. IN OUR VIEW IT WOULD NOT BE IN THE BEST INTERESTS OF LABOUR RELATIONS ACCEDE TO THE WISHES OF THE APPLICANT. ACCORDINGLY, THE REQUEST OF THE APPLICANT THAT UNION ELECTRIC AND UNDERGROUND MINING ELECTRIC BE MADE PARTIES TO THIS PROCEEDING AND ITS FURTHER REQUEST TO ADDUCE EVIDENCE BEFORE THE BOARD IN CONNECTION WITH ITS ALLEGATIONS WITH RESPECT TO SECTION 1(4) OF THE LABOUR RELATIONS ACT ARE DENIED.

11. THIRDLY, WITH REGARD TO THE SUBMISSIONS OF THE APPLICANT WITH RESPECT TO THE APPLICABILITY OF SECTION 55 (FORMERLY SECTION 47A) OF THE LABOUR RELATIONS ACT, THE BOARD IS OF THE OPINION THAT THE APPLICANT MISCONCEIVES THE SUBSTANTIVE PROVISIONS OF THAT SECTION OF THE LABOUR RELATIONS ACT. SECTION 55 CONTEMPLATES FACTUAL SITUATION WHERE A TRADE UNION EITHER HAS BARGAINING RIGHTS OR IS ENTITLED TO GIVE NOTICE TO BARGAIN WITH RESPECT TO EMPLOYEES OF AN EMPLOYER WHERE THE SALE OF A BUSINESS OR PART OF A BUSINESS HAS OCCURRED. IN THE INSTANT APPLICATION THERE IS NO INDICATION THAT THE APPLICANT EITHER HAS BARGAINING RIGHTS OR IS ENTITLED TO GIVE NOTICE TO BARGAIN WITH RESPECT TO THE EMPLOYEES AFFECTED BY THIS APPLICATION. IT, THEREFORE, APPEARS TO THE BOARD THAT THE APPLICANT'S REQUEST REGARDING RIGHTS WHICH IT MAY HAVE UNDER SECTION 55 OF THE LABOUR RELATIONS ACT IS PREMATURE. ACCORDINGLY, SINCE THE QUESTION OF THE SALE OF A BUSINESS FROM ONE EMPLOYER TO ANOTHER DOES NOT PROPERLY ARISE IN THIS APPLICATION, THE REQUEST OF THE APPLICANT WITH RESPECT TO SECTION 55 OF THE LABOUR RELATIONS ACT IS DISMISSED BUT WITHOUT PREJUDICE TO APPLICANT TO PURSUE ANY RIGHTS IT MAY PERCEIVE IT HAS AT A TIME SUBSEQUENT TO THIS DECISION.

12. THE BOARD FURTHER FINDS THAT ALL ELECTRICIANS AND ELECTRICIANS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT WITHIN A RADIUS OF THIRTY-FIVE MILES FROM THE CITY OF SUDBURY FEDERAL BUILDING, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING

FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

13. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN SIXTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON MARCH 17, 1971, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 92(2)(J) [FORMERLY SECTION 72(2)(J)] OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

14. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

1216-71-U: RETAIL CLERKS INTERNATIONAL ASSOCIATION (COMPLAINANT) V. MACLEODS, A DIVISION OF MACLEOD STEDMAN LIMITED (RESPONDENT).

BEFORE: FRANK V. BOSCARIOL, VICE-CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND P. J. O'KEEFFE.

APPEARANCES AT THE HEARING: BERNARD A. CHRISTOPHE FOR THE COMPLAINANT; J. D. GRANT, H. J. SEDDON AND L. P. COMPTON FOR THE RESPONDENT.

DECISION OF THE BOARD: JANUARY 11, 1972.

1. THE NAME "MACLEODS, A DIVISION OF MACLEOD STEDMAN LTD. AT DRYDEN, ONTARIO", APPEARING IN THE STYLE OF CAUSE OF THIS APPLICATION AS THE NAME OF THE RESPONDENT IS AMENDED TO READ: "MACLEODS, A DIVISION OF MACLEOD STEDMAN LIMITED."

2. THIS IS A COMPLAINT FILED UNDER THE PROVISIONS OF SECTION 79 OF THE LABOUR RELATIONS ACT WHEREIN THE COMPLAINANT ALLEGES THAT MRS. GLADYS HUCKELL, THE AGGRIEVED PERSON, HAS BEEN DEALT WITH BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF SECTIONS 56, 58, 59, 61 AND 70 OF THE ACT.

3. UPON HEARING THE EVIDENCE OF MRS. GLADYS HUCKELL AND MR. SEDDON, AND TAKING INTO ACCOUNT THE REPRESENTATIONS OF THE PARTIES THERETO, WE FIND THAT THE COMPLAINANT HAS FAILED TO SATISFY THE ONUS RESTING UPON IT OF ESTABLISHING THAT THE AGGRIEVED PERSON WAS DEALT WITH CONTRARY TO THE PROVISIONS OF THE ACT. WE SHOULD ADD THAT ON THE EVIDENCE THE BOARD IS SATISFIED THAT MRS. HUCKELL WAS DISCHARGED BY THE RESPONDENT BECAUSE OF HER REFUSAL TO SIGN THE "RECORD OF UNSATISFACTORY SERVICE" DOCUMENT WHEN REQUESTED TO DO SO BY MR. SEDDON. ALTHOUGH IT MAY BE OPEN TO QUESTION IN ARBITRATION PROCEEDINGS AS TO WHETHER SUCH CONDUCT ON HER PART WOULD JUSTIFY THE PENALTY OF DISCHARGE BY HER EM-

PLOYER IN THESE CIRCUMSTANCES, WE ARE NOT CALLED UPON TO DECIDE THE ISSUE IN THESE PROCEEDINGS. AS WAS STATED BY THE BOARD IN THE WESTON BAKERIES LIMITED CASE, [1971] OLRB REP., PAGE 30 AT PAGE 34:

"IN COMPLAINTS BROUGHT UNDER SECTION 65 (NOW SECTION 79) THE PRIMARY QUESTION BEFORE THE BOARD IS NOT WHETHER THERE WAS JUST CAUSE FOR DISCHARGE BUT WHETHER THE PERSON COMPLAINING WAS DEALT WITH CONTRARY TO THE PROVISIONS OF THE ACT."

4. HAVING REGARD TO ALL OF THE CIRCUMSTANCES, WE FIND THAT AS THE COMPLAINANT HAS NOT SUSTAINED THE BURDEN OF PROOF BY SHOWING THAT THE AGGRIEVED PERSON WAS DISMISSED FOR UNION ACTIVITY, THIS COMPLAINT IS THEREFORE DISMISSED.

1237-71-R: BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION LOCAL 183, AFFILIATED SEIU, A.F.L., C.I.O., C.L.C. (APPLICANT) v. BEACON HILL LODGES OF CANADA LIMITED (RESPONDENT).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND O. HODGES.

DECISION OF THE BOARD: JANUARY 12, 1972.

1. HAVING REGARD TO THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER DATED DECEMBER 10, 1971 AND THE REPRESENTATIONS OF THE RESPONDENT WITH RESPECT THERETO, THE BOARD FINDS THAT WHILE THE QUASI-PROFESSIONAL STAFF (R.N.A.'s AND QUALIFIED EQUIVALENTS) HAVE CERTAIN LIMITED CIRCUMSCRIBED POWERS THEY HAVE NO REAL INDEPENDENT AUTHORITY AND ACCORDINGLY DO NOT EXERCISE MANAGERIAL FUNCTIONS AND ARE NOT EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT. THE BOARD ACCORDINGLY FINDS THAT THE QUASI-PROFESSIONAL STAFF (R.N.A.'s AND QUALIFIED EQUIVALENTS) ARE EMPLOYEES OF THE RESPONDENT INCLUDED IN THE VOTING CONSTITUENCY AND WERE ACCORDINGLY ELIGIBLE TO VOTE.

2. THE BOARD DIRECTS THE REGISTRAR TO CAUSE THE BALLOTS CAST BY ALL THOSE ELIGIBLE TO VOTE IN THE PRE-HEARING REPRESENTATION VOTE CONDUCTED IN THIS MATTER TO BE COUNTED AND REPORT TO THE BOARD.

1006-71-M: R. W. S. DELIVERY SERVICES LIMITED (EMPLOYER) v. MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES, LOCAL 647 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, (TRADE UNION).

BEFORE: FRANK V. BOSCARIOL, VICE-CHAIRMAN, AND BOARD MEMBERS P. J. O'KEEFFE AND J.E.C. ROBINSON, Q.C.

APPEARANCES AT THE HEARING: K. G. SCOTT AND L. BOJAS FOR THE EMPLOYER; T. E. ARMSTRONG AND G. HARRISON FOR THE TRADE UNION.

DECISION OF THE BOARD: JANUARY 13, 1972.

1. THE MINISTER OF LABOUR HAS REFERRED TO THE BOARD PURSUANT TO THE PROVISIONS OF SECTION 96 OF THE LABOUR RELATIONS ACT, THE QUESTION AS TO WHETHER THE MINISTER HAS THE AUTHORITY UNDER THE ACT TO APPOINT A CONCILIATION OFFICER.

2. UPON REVIEWING THE EVIDENCE AND REPRESENTATIONS OF THE PARTIES AT THE HEARINGS CONDUCTED BEFORE THE BOARD ON OCTOBER 26 AND NOVEMBER 17, 1971, IT NOW BECOMES APPARENT THAT ANY DECISION FORTHCOMING FROM THE BOARD HEREIN MAY DIRECTLY AFFECT THE RIGHTS OF SWISS CHALET BAR-B-Q A DIVISION OF HARVEY S FOODS LIMITED.

3. HAVING CAREFULLY CONSIDERED THE WRITTEN REPRESENTATIONS OF ALL CONCERNED, WE HEREBY DIRECT THAT SWISS CHALET BAR-B-Q A DIVISION OF HARVEY'S FOODS LIMITED BE ADDED AS A PARTY AND THAT THESE PROCEEDINGS BE LISTED FOR A HEARING DE NOVO.

4. THE MATTER IS REFERRED TO THE REGISTRAR.

1397-71-R: CANADIAN STEELWORKERS UNION OF CANADA (APPLICANT) V. ATLAS STEELS COMPANY, A DIVISION OF RIO ALGOM MINES LTD. (RESPONDENT) V. UNITED STEELWORKERS OF AMERICA (INTERVENER).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND J.E.C. ROBINSON, Q.C.

DECISION OF THE BOARD: JANUARY 13, 1972.

1. THE APPLICANT HAS REQUESTED THAT A PRE-HEARING REPRESENTATION VOTE BE TAKEN.

. . .

3. THE BOARD DIRECTS THAT A PRE-HEARING REPRESENTATION VOTE BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN THE FOLLOWING VOTING CONSTITUENCY:

ALL OFFICE, CLERICAL AND TECHNICAL EMPLOYEES
OF THE RESPONDENT AT ITS PLANT AND OFFICES

LOCATED AT CENTRE STREET IN THE CITY OF WELLAND, SAVE AND EXCEPT SUPERVISORS AND FOREMEN, PERSONS ABOVE THE RANK OF SUPERVISOR AND FOREMAN, SALESMEN, BUYERS, PLANT NURSES, MILL METALLURGISTS, SERVICE METALLURGISTS, RESEARCH METALLURGISTS, FINANCIAL ANALYSTS, BUDGET ANALYSTS, GRADUATE CHEMISTS, TECHNICAL ADVISORS, "KNOW-HOW" CO-ORDINATORS AND ADVISORS, JOB CLASSIFICATION ANALYSTS, METHODS ENGINEERS, DESIGN ENGINEERS, CONSTRUCTION ENGINEERS, EMPLOYEES OF THE INDUSTRIAL RELATIONS DEPARTMENT, ONE CONFIDENTIAL SECRETARY TO EACH OF THE PRESIDENT, ADMINISTRATIVE ASSISTANT TO THE PRESIDENT, VICE-PRESIDENT OF MANUFACTURING, VICE-PRESIDENT SALES AND MARKETING, VICE-PRESIDENT OF FINANCE, GENERAL MANAGER OF ATLAS TITANIUM, SENIOR VICE-PRESIDENT, MANAGER OF TECHNICAL AND MANUFACTURING SERVICES, MANAGER OF MATERIALS, VICE-PRESIDENT OF RESEARCH AND DEVELOPMENT, MANAGER OF INDUSTRIAL ENGINEERING, MANAGER OF PURCHASES, EMPLOYEES ENGAGED IN A GRADUATE TRAINING PROGRAM, CASUAL PART-TIME EMPLOYEES, PERSONS EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS ON A CO-OPERATIVE TRAINING BASIS WITH A UNIVERSITY, OR HIRED DURING THE SCHOOL VACATION PERIOD WHO ARE NOT PERFORMING WORK IN THE BARGAINING UNIT.

4. ALL EMPLOYEES OF THE RESPONDENT IN THE VOTING CONSTITUENCY ON THE 4TH DAY OF JANUARY, 1972 WHO HAVE NOT VOLUNTARILY TERMINATED THEIR EMPLOYMENT OR WHO HAVE NOT BEEN DISCHARGED FOR CAUSE BETWEEN THE 4TH DAY OF JANUARY, 1972 AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.
5. THE BOARD DIRECTS THAT THE BALLOT BOX CONTAINING ALL THE BALLOTS CAST IN THE PRE-HEARING REPRESENTATION VOTE SHALL BE SEALED AND THAT THE BALLOTS SHALL NOT BE COUNTED PENDING THE FURTHER DIRECTION BY THE BOARD.
6. THE BOARD DIRECTS THE REGISTRAR TO LIST THIS MATTER FOR HEARING FOLLOWING THE TAKING OF THE PRE-HEARING REPRESENTATION VOTE TO AFFORD THE BOARD AN OPPORTUNITY TO INQUIRE INTO THE STATUS OF THE APPLICANT AS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(N) OF THE LABOUR RELATIONS ACT.
7. VOTERS WILL BE GIVEN A CHOICE BETWEEN THE APPLICANT AND THE INTERVENER.
8. THE INTERVENER'S REQUEST THAT THE BALLOT IN THIS MATTER READ "UNITED STEELWORKERS OF AMERICA LOCAL 7777" IS DENIED SINCE LOCAL 7777

IS NOT A PARTY TO THIS APPLICATION OR TO THE COLLECTIVE AGREEMENT WITH THE RESPONDENT.

9. THE MATTER IS REFERRED TO THE REGISTRAR.

1382-71-R: THE CIVIL SERVICE ASSOCIATION OF ONTARIO (INC.) (APPLICANT) V. VICTORIA HOSPITAL BOARD OF TRUSTEES OF THE CITY OF LONDON (RESPONDENT).

BEFORE: FRANK V. BOSCARIOL, VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND H. F. IRWIN.

APPEARANCES AT THE HEARING: DONALD J. M. BROWN AND TERENCE O'DELL FOR THE APPLICANT; E. H. WRIGHT, L. R. ALLEN AND W. J. WHITTAKER, Q.C., FOR THE RESPONDENT.

DECISION OF THE BOARD: JANUARY 13, 1972.

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2. HAVING REGARD TO THE AGREEMENT OF THE PARTIES, AND TO THE SPECIAL CIRCUMSTANCES OF THIS CASE, THE BOARD FURTHER FINDS THAT ALL TECHNICAL PERSONNEL OF THE RESPONDENT AT ITS HOSPITAL AT LONDON SAVE AND EXCEPT PROFESSIONAL MEDICAL STAFF, GRADUATE NURSING STAFF, UNDERGRADUATE NURSES, GRADUATE PHARMACISTS, UNDERGRADUATE PHARMACISTS, GRADUATE DIETITIANS, STUDENT DIETITIANS, SOCIAL WORKERS, CHIEF ENGINEER AND ASSISTANT CHIEF ENGINEER, RESIDENCE DIRECTOR, SUPERVISORS, FOREMEN, PERSONS ABOVE THE RANK OF SUPERVISOR OR FOREMAN, OFFICE AND CLERICAL STAFF, WATCHMEN, SECURITY GUARDS, REGISTERED NURSING ASSISTANTS, STUDENT REGISTERED NURSING ASSISTANTS, STUDENTS ENGAGED IN A CO-OPERATIVE PROGRAM BETWEEN THE RESPONDENT AND A UNIVERSITY OR COLLEGE, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK, STUDENTS EMPLOYED DURING SCHOOL VACATION PERIODS AND THOSE PERSONS COVERED BY SUBSISTING COLLECTIVE AGREEMENTS BETWEEN THE RESPONDENT AND THE CIVIL SERVICE ASSOCIATION OF ONTARIO (INC.) AND LONDON AND DISTRICT BUILDING SERVICE WORKERS' UNION, LOCAL 220, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

3. FOR THE PURPOSES OF CLARITY, THE BOARD NOTES THE FURTHER AGREEMENT OF THE PARTIES THAT:

- (A) THE TERM "TECHNICAL PERSONNEL" IN THE ABOVE BARGAINING UNIT INCLUDES RADIOLOGICAL TECHNICIANS, ELECTROENCEPHALOGRAPH TECHNICIANS,

AUTOPSY MASTERS, ELECTROCARDIOGRAPH TECHNICIANS, REGISTERED RESPIRATORY TECHNOLOGISTS, GLAUCOMA TECHNICIANS, EAR, NOSE AND THROAT TECHNICIANS, CARDIOVASCULAR TECHNICIANS AND ELECTRONIC TECHNICIANS IN THE PULMONARY FUNCTION LABORATORY, ALL OF WHOM SHOW A COMMUNITY OF INTEREST SEPARATE AND DISTINCT FROM OTHER TECHNICAL PERSONNEL;

- (B) GRADUATE AND UNDERGRADUATE SPEECH THERAPISTS, PHYSIOTHERAPISTS, OCCUPATIONAL THERAPISTS, PSYCHOLOGISTS, PSYCHOMETRISTS, AUDIOLOGISTS AND STAFF WITH VETERINARIAN DEGREES ARE EXCLUDED FROM THE BARGAINING UNIT;
- (C) THE TERM "OFFICE AND CLERICAL STAFF" INCLUDES WARD CLERKS, ADMITTING PORTER CLERKS, INFORMATION CLERKS, CASHIERS, MAIL CLERK-MESSENGERS, LIBRARIANS AND SWITCHBOARD OPERATORS;
- (D) INSTRUCTOR TECHNOLOGISTS OR TECHNICIANS AND STUDENT TECHNOLOGISTS OR TECHNICIANS IN THE REGIONAL SCHOOL OF MEDICAL LABORATORY TECHNOLOGY ARE NOT INCLUDED IN THE BARGAINING UNIT.

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488-71-R: THE GENERAL CONTRACTORS' SECTION OF THE TORONTO CONSTRUCTION ASSOCIATION (APPLICANT) v. THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL UNION #793 (RESPONDENT) v. THE ONTARIO ERECTORS ASSOCIATION (INTERVENER #1) v. THE METROPOLITAN TORONTO SEWER AND WATERMAIN CONTRACTORS ASSOCIATION (INTERVENER #2) v. ONTARIO ROAD BUILDERS ASSOCIATION (INTERVENER #3) v. THE METROPOLITAN TORONTO ROAD BUILDERS' ASSOCIATION (INTERVENER #4) v. HEAVY CONSTRUCTION ASSOCIATION OF TORONTO (INTERVENER #5) v. TORONTO AND DISTRICT EXCAVATORS ASSOCIATION (INTERVENER #6) v. CRANE RENTAL ASSOCIATION OF ONTARIO (INTERVENER #7).

BEFORE: J.H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND F. W. MURRAY.

APPEARANCES AT THE HEARING: B.W. BINNING AND G.A. BECIGNEUL FOR THE APPLICANT; H.A. HERRON FOR THE RESPONDENT; ROBIN B. CUMINE AND S. G.

ECCLES FOR INTERVENER #1; B.W. BINNING FOR INTERVENERS #2, #3, #4 AND #5; WM. T. WHITE FOR INTERVENER #6; T. GORDON SMITH FOR INTERVENER #7.

DECISION OF THE BOARD:

JANUARY 12, 1972.

1. THE BOARD DIRECTS THAT THE TORONTO AND DISTRICT EXCAVATORS ASSOCIATION AND THE CRANE RENTAL ASSOCIATION OF ONTARIO BE ADDED AS PARTIES TO THESE PROCEEDINGS.

2. THE EMPLOYER DATE SET FOR THIS APPLICATION WAS DECEMBER 16, 1971. TO DATE CERTAIN EMPLOYERS SERVED WITH NOTICE OF THIS APPLICATION HAVE NOT FILED WITH THE BOARD AN EMPLOYER INTERVENTION IN FORM 68 TOGETHER WITH SCHEDULE "H" AS REQUIRED BY SECTION 87 OF THE BOARD'S RULES OF PROCEDURE.

3. MR. H.C. DRAPER, EXAMINER; MR. S.G. GRIZZLE, EXAMINER; MR. J.R. HENDERSON, EXAMINER; MR. J.E. LEONARD, EXAMINER; MR. J.A. MACDONALD, EXAMINER; MR. C.F. ROBICHEAU, EXAMINER; ARE HEREBY AUTHORIZED UNDER THE GENERAL DIRECTION OF THE REGISTRAR TO CONDUCT INQUIRIES RESPECTING THE INFORMATION REQUIRED TO BE FILED WITH THE BOARD IN FORM 68 IN SCHEDULE "H" AND TO REPORT TO THE BOARD THEREON.

1019-71-R: S.E.U., LOCAL 204, AFFILIATED S.E.I.U., A.F.L., C.I.O., C.L.C. (APPLICANT) v. EXTENDICARE (CANADA) LIMITED (RESPONDENT) v. CANADIAN UNION OF PUBLIC EMPLOYEES (INTERVENER).

BEFORE: FRANK V. BOSCARIOL, VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND F. W. MURRAY.

DECISION OF VICE-CHAIRMAN FRANK V. BOSCARIOL AND BOARD MEMBER F. W. MURRAY: DECEMBER 23, 1971.

1. HAVING REGARD TO OUR FINDINGS AS CONTAINED IN PARAGRAPH #7 HEREIN THE NAME "CANADIAN UNION OF PUBLIC EMPLOYEES" APPEARING IN THE STYLE OF CAUSE OF THIS APPLICATION AS THE NAME OF THE APPLICANT IS STRUCK OUT AND THE NAME "S.E.U., LOCAL 204, AFFILIATED S.E.I.U., A.F.L., C.I.O., C.L.C." IS SUBSTITUTED THEREFOR. FURTHER, THE NAME "S.E.U., LOCAL 204, AFFILIATED S.E.I.U., A.F.L., C.I.O., C.L.C." (HEREINAFTER REFERRED TO AS SEU) APPEARING IN THE STYLE OF CAUSE OF THIS APPLICATION AS THE NAME OF THE INTERVENER IS STRUCK OUT AND THE NAME "CANADIAN UNION OF PUBLIC EMPLOYEES" (HEREINAFTER REFERRED TO AS CUPE) IS SUBSTITUTED THEREFOR.

2. THE BOARD FURTHER FINDS THAT BOTH SEU AND CUPE ARE TRADE UNIONS WITHIN THE MEANING OF SECTION 1(1)(N) OF THE LABOUR RELATIONS ACT.

3. PURSUANT TO THE DECISION OF THE BOARD IN THIS MATTER DATED OCTOBER 19, 1971, THE REGISTRAR FIXED OCTOBER 29, 1971, AS THE NEW TERMINAL DATE FOR THIS APPLICATION. THE REGISTRAR SUBSEQUENTLY ON OCTOBER 23, 1971, INFORMED THE PARTIES THAT AT THE CONTINUATION OF HEARING SET FOR NOVEMBER 22, 1971, THE BOARD WOULD, FURTHER TO ITS PRELIMINARY INVESTIGATION, INQUIRE INTO THE ALLEGATION THAT DONNA ROWSELL DID NOT PAY ANY MONEY ON HER OWN BEHALF IN CONNECTION WITH HER APPLICATION FOR MEMBERSHIP WHICH FORMED PART OF THE MEMBERSHIP EVIDENCE FILED IN SUPPORT OF SEU'S INTERVENER APPLICATION FOR CERTIFICATION.

4. PRIOR TO THE ORIGINAL HEARING OF THIS MATTER ON OCTOBER 19, 1971, THE BOARD HAD ALSO CONDUCTED PRELIMINARY INVESTIGATIONS INTO ALLEGATIONS OF NON-PAY IN CONNECTION WITH TWO PERSONS WHO HAD SIGNED MEMBERSHIP CARDS IN CUPE, WHICH WOULD HAVE, IN THE NORMAL COURSE OF EVENTS, NECESSITATED A FURTHER INQUIRY BY THE BOARD AT A HEARING. HOWEVER, IT IS NOT THE PRACTICE OF THE BOARD TO PROCEED WITH SUCH A HEARING WHERE THE BOARD HAS PERMITTED THE TRADE UNION AFFECTED, TO WITHDRAW ITS APPLICATION FOR CERTIFICATION. THE PARTIES WERE INFORMED OF THIS PRACTICE AT THE ORIGINAL HEARING, WHEREIN THE BOARD, UPON GRANTING CUPE'S REQUEST FOR WITHDRAWAL FROM THESE PROCEEDINGS, INDICATED THAT IN THESE CIRCUMSTANCES, IT WOULD NOT PROCEED TO ENQUIRE FURTHER INTO THE NON-PAY ALLEGATIONS RESPECTING CUPE.

5. HOWEVER, BY CORRESPONDENCE DATED OCTOBER 29, 1971, RUBY CHISHOLM, ON BEHALF OF CUPE FILED AN INTERVENER'S APPLICATION FOR CERTIFICATION AND ALONG WITH HER NEW FORM 8 DECLARATION, FILED FRESH EVIDENCE OF MEMBERSHIP.

6. AT THE SUBSEQUENT HEARING OF THIS MATTER ON NOVEMBER 22, 1971, COUNSEL FOR SEU QUESTIONED THE RIGHT OF CUPE TO NOW INTERVENE IN THESE PROCEEDINGS IN VIEW OF ITS INITIAL WITHDRAWAL. HE FURTHER ARGUED THAT IN ANY EVENT, THE BOARD, AND HENCE THE REGISTRAR, HAD NO AUTHORITY TO EXTEND THE TERMINAL DATE, SINCE PURSUANT TO SECTION 10(2) OF THE BOARD'S RULES OF PROCEDURE, THE FIXING OF A TERMINAL DATE IS NOT APPLICABLE TO AN INTERVENER'S APPLICATION.

7. IN THE CIRCUMSTANCES WHERE THE BOARD PERMITS THE APPLICANT TRADE UNION TO WITHDRAW ITS APPLICATION FOR CERTIFICATION IN PROCEEDINGS ALSO INVOLVING AN INTERVENER'S APPLICATION FOR CERTIFICATION, THE POLICY OF THE BOARD HAS BEEN TO EXTEND THE TERMINAL DATE FOR PURPOSES OF POSTING THE INTERVENER'S APPLICATION AND THUS PROVIDING NOTICE TO THE EMPLOYEES INVOLVED. THE INTERVENER, AT THIS POINT, IN EFFECT, BECOMES THE APPLICANT STANDING IN THE PLACE OF THE FORMER UNION PARTY WHICH HAS NOW WITHDRAWN FROM THE PROCEEDINGS. ITS APPLICATION, THEREFORE, NO LONGER REMAINS THAT OF AN INTERVENER AND WOULD NOT, AS A CONSEQUENCE, BE CAUGHT BY THE PROHIBITION CONTAINED IN SECTION 10(2) OF

THE RULES. IF FURTHER AUTHORITY IS REQUIRED FOR EXTENDING THE TERMINAL DATE IN THESE CIRCUMSTANCES, REFERENCE SHOULD BE MADE TO SECTION 57(2) OF THE RULES WHICH PROVIDES:

"THE BOARD MAY, UPON SUCH TERMS AS IT CONSIDERS ADVISABLE, ENLARGE THE TIME PRESCRIBED BY THESE RULES FOR DOING ANY ACT, SERVING ANY NOTICE, FILING ANY REPORT, DOCUMENT OR PAPER OR TAKING ANY PROCEEDING AND MAY DO SO ALTHOUGH APPLICATION THEREFOR IS NOT MADE UNTIL AFTER THE EXPIRATION OF THE TIME PRESCRIBED."

IN THESE CIRCUMSTANCES, REGARD SHOULD ALSO BE MADE TO SECTION 10(3) OF THE RULES WHICH PROVIDES:

"WHERE THE BOARD SO DIRECTS, THE REGISTRAR SHALL SERVE THE EMPLOYER WITH NOTICES OF THE INTERVENER'S APPLICATION FOR POSTING."

ONCE THE TERMINAL DATE HAS BEEN EXTENDED, WE CAN FIND NO AUTHORITY IN THESE CIRCUMSTANCES TO PREVENT ANY TRADE UNION FROM FILING WITH THE BOARD WITHIN THE NEW PRESCRIBED TIME PERIOD, EVIDENCE OF MEMBERSHIP IN CONNECTION WITH ITS INTERVENER'S APPLICATION FOR CERTIFICATION. THE FACT THAT SUCH A TRADE UNION MAY HAVE INITIALLY APPEARED IN THESE PROCEEDINGS AS AN APPLICANT, DOES NOT, IN OUR OPINION, PREVENT IT FROM SUBSEQUENTLY RE-ENTERING THESE SAME PROCEEDINGS IN THE CAPACITY OF INTERVENER, IN THESE CIRCUMSTANCES.

8. HOWEVER, THE BOARD IS NOW CONCERNED WITH WHAT EFFECT, IF ANY, SHOULD BE GIVEN TO THE ORIGINAL MEMBERSHIP CARDS FILED BY CUPE IN THE SAME PROCEEDINGS IN VIEW OF THE FACT THAT TWO OF SUCH CARDS HAD BEEN CHALLENGED AS INDICATED IN PARAGRAPH #4, HEREIN.

9. HAVING REGARD TO ALL OF THE CIRCUMSTANCES, AND TO THE WRITTEN REPRESENTATIONS OF THE PARTIES HEREIN, WE FIND THAT THE BOARD SHOULD ENQUIRE FURTHER, BY MEANS OF A HEARING, INTO THE ALLEGATIONS OF NON-PAY CONCERNING THE ORIGINAL EVIDENCE OF MEMBERSHIP FILED BY CUPE IN THESE PROCEEDINGS. FOLLOWING THE BOARD'S ENQUIRY INTO THIS MATTER, THE BOARD WILL ENTERTAIN REPRESENTATIONS FROM THE PARTIES AS TO WHAT EFFECT, IF ANY, SUCH EVIDENCE ADDUCED THEREIN, WILL HAVE UPON THE MORE RECENT EVIDENCE OF MEMBERSHIP FILED BY CUPE IN THESE SAME PROCEEDINGS.

10. THE MATTER IS REFERRED TO THE REGISTRAR.

DECISION OF BOARD MEMBER E. BOYER: DECEMBER 23, 1971.

IN THE LIGHT OF THE FRESH EVIDENCE OF MEMBERSHIP AND THE NEW

FORM 8 FILED BY CUPE IN THESE PROCEEDINGS, AND HAVING REGARD TO ALL OF THE CIRCUMSTANCES HEREIN, I WOULD NOT HAVE ORDERED A FURTHER ENQUIRY CONCERNING THE NON-PAY ALLEGATIONS RELATING TO THE ORIGINAL EVIDENCE OF MEMBERSHIP OF CUPE.

341-71-U: LOCAL 1966, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, A.F.L. - C.I.O. & C.L.C. (COMPLAINANT) v. JOHNSON CONTROLS LIMITED (RESPONDENT).

BEFORE: O.B. SHIME, VICE-CHAIRMAN, AND BOARD MEMBERS J.D. BELL AND P.J. O'KEEFE.

DECISION OF THE BOARD: JANUARY 17, 1972.

1. THIS IS A REQUEST FOR THE BOARD TO RECONSIDER ITS DECISION DATED OCTOBER 19, 1971, WHEREIN WE DECIDED THAT THE REMOVAL OF AG-GRIEVED EMPLOYEES FROM A PENSION PLAN MAINTAINED BY THE RESPONDENT FOR ITS EMPLOYEES CONSTITUTED DISCRIMINATION WITHIN THE MEANING OF SECTION 58 OF THE LABOUR RELATIONS ACT. COUNSEL FOR THE UNION HAS ANSWERED THE REQUEST FOR RECONSIDERATION AND COUNSEL FOR THE COMPANY HAS REPLIED TO THAT ANSWER.

2. THE THRUST OF THE REQUEST AS WE UNDERSTAND IT IS THAT OUR DECISION OF OCTOBER 19, 1971, WAS CONTRARY TO THE DECISION OF THIS BOARD IN INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) v. FORD MOTOR COMPANY OF CANADA, LIMITED (1966) JUNE OLRB MTHLY. REP. 195. COUNSEL FOR THE COMPANY CLAIMS THAT A PROVISION IN A PENSION PLAN THAT EXCLUDES PARTICIPATION IN THE PLAN OF PERSONS WHO ARE COVERED BY A COLLECTIVE BARGAINING AGREEMENT DOES NOT CONSTITUTE A VIOLATION OF SECTION 58(A) OF THE LABOUR RELATIONS ACT, AND SUBMITS THAT OUR DECISION IN THAT REGARD IS CONTRARY TO THE FORD MOTOR COMPANY OF CANADA, LIMITED CASE.

3. IN OUR VIEW THE LANGUAGE OF THE PENSION PLAN IS ONLY ONE FACTOR FOR CONSIDERATION. QUITE CLEARLY THE USE OF LANGUAGE EXCLUDING PERSONS FROM PENSION PLANS BASED UPON COVERAGE UNDER A COLLECTIVE AGREEMENT OR LANGUAGE WHICH EXCLUDES PERSONS REPRESENTED BY A COLLECTIVE BARGAINING AGENT MAY CREATE ARGUABLE QUESTIONS AS TO WHETHER SUCH A PROVISION CONSTITUTES A VIOLATION OF THE ACT WITH RESPECT TO EITHER MEMBERSHIP IN A "TRADE UNION" OR THE EXERCISE OF "RIGHTS UNDER THE ACT", PURSUANT TO SECTION 58 OF THE ACT.

4. HOWEVER, OUR DECISION WAS NOT BASED ON THE LANGUAGE OF THE PENSION PLAN STANDING ALONE. IT APPEARED TO US FROM THE EVIDENCE THAT THE COMPANY WAS NOT COMPLETELY FORECLOSED BY THE VARIOUS GOVERNMENT AGENCIES IN THE WAY THAT IT MIGHT AMEND ITS PENSION PLAN. IN PARAGRAPH

8 OF OUR DECISION DATED OCTOBER 19, 1971, THERE WAS A REFERENCE TO A LETTER FROM THE PENSION CONSULTANTS WHICH INDICATES THAT THE COMPANY HAD A DISCRETION AND SUGGESTS THE BASIS FOR ITS DECISION. THAT LETTER PROVIDES INTER ALIA: "WE FEEL THAT IT IS IMPORTANT TO BROADEN THE AFFECTED CATEGORY NOW, BECAUSE UNIONS IN GENERAL ARE NOW PLACING PRIMARY IMPORTANCE ON PENSIONS AND THOSE UNIONS WHO CURRENTLY DO NOT HAVE PLANS WILL NO DOUBT HAVE THEM IN THE FUTURE." THAT STATEMENT WAS AUGMENTED AT THE HEARING BY THE PENSION CONSULTANT WHO TESTIFIED UNDER CROSS-EXAMINATION THAT THE AGGRIEVED EMPLOYEES WERE REMOVED FROM THE PLAN ON THE BASIS OF THEIR BEING MEMBERS OF A TRADE UNION. THAT TESTIMONY IS REFLECTED IN PARAGRAPH 10 OF OUR DECISION OF OCTOBER 19TH. OUR DECISION THEREFORE WAS BASED ON ALL OF THE EVIDENCE AND THE PARTICULAR CIRCUMSTANCES OF THIS CASE. WE EXPRESS NO OPINION AS TO THE LANGUAGE OF THIS PARTICULAR PENSION PLAN STANDING ALONE.

5. FOR THESE REASONS THE REQUEST FOR RECONSIDERATION IS DENIED.

1360-71-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS LOCAL UNION 721 (APPLICANT) v. INDAL CANADA LIMITED, ALUMIPRIME DIVISION (RESPONDENT).

BEFORE: R.A. FURNESS, VICE-CHAIRMAN AND BOARD MEMBERS E. BOYER AND F.W. MURRAY.

APPEARANCES AT THE HEARING: AUBREY GOLDEN, GERALD PUNNETT AND BILL TAYLOR FOR THE APPLICANT; W.G. PHELPS AND J. MCGEOWN FOR THE RESPONDENT.

DECISION OF THE BOARD: JANUARY 17, 1972.

1. THE NAME "ALUMIPRIME LIMITED" APPEARING IN THE STYLE OF CAUSE OF THIS APPLICATION IS AMENDED TO READ: "INDAL CANADA LIMITED, ALUMIPRIME DIVISION".

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3. THE BOARD FURTHER FINDS THAT THIS IS AN APPLICATION FOR CERTIFICATION WITHIN THE MEANING OF SECTION 108 OF THE LABOUR RELATIONS ACT.

4. THE RESPONDENT INFORMED THE BOARD THAT ON THE DATE OF THE MAKING OF THIS APPLICATION FOR CERTIFICATION IT HAD IN ITS EMPLOY IN REGULAR BOARD AREA No. 8 ONLY WINDOW INSTALLERS AND THEIR HELPERS. (APART FROM OTHER EMPLOYEES COVERED BY SUBSISTING COLLECTIVE AGREEMENTS).

5. HAVING REGARD TO THE FOREGOING AND IN THE CIRCUMSTANCES OF THIS CASE, THE BOARD FURTHER FINDS PURSUANT TO SECTION 6(1) OF THE LABOUR RELATIONS ACT THAT ALL WINDOW INSTALLERS AND THEIR HELPERS IN THE EMPLOY OF THE RESPONDENT IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

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7. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

1116-71-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. EXTENDICARE (CANADA) LTD. (RESPONDENT).

- AND -

1132-71-R: SERVICE EMPLOYEES UNION, LOCAL 204 AFFILIATED WITH THE AFL-CIO-CLC (APPLICANT) V. EXTENDICARE (CANADA) LTD. (RESPONDENT).

BEFORE: O.B. SHIME, VICE-CHAIRMAN, AND BOARD MEMBERS J.D. BELL AND O. HODGES.

DECISION OF THE BOARD: JANUARY 19, 1972.

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2. BOTH CANADIAN UNION OF PUBLIC EMPLOYEES AND SERVICE EMPLOYEES UNION, LOCAL 204 AFFILIATED WITH THE AFL-CIO-CLC ARE APPLYING FOR CERTIFICATION WITH RESPECT TO THE SAME BARGAINING UNIT OF EMPLOYEES.

3. THE BOARD FINDS THAT CANADIAN UNION OF PUBLIC EMPLOYEES IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(N) OF THE LABOUR RELATIONS ACT.

4. THE BOARD FINDS THAT SERVICE EMPLOYEES UNION, LOCAL 204 AFFILIATED WITH THE AFL-CIO-CLC IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(N) OF THE LABOUR RELATIONS ACT.

5. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT ST. CATHARINES, SAVE AND EXCEPT PROFESSIONAL NURSING STAFF, PHYSIOTHERAPISTS, OCCUPATIONAL THERAPISTS, SUPERVISORS, FOREMEN, PERSONS ABOVE THE RANK OF SUPERVISOR AND FOREMAN, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RE-

SPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

6. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT NOT LESS THAN THIRTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF CANADIAN UNION OF PUBLIC EMPLOYEES ON OCTOBER 27, 1971, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 92(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

7. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT NOT LESS THAN THIRTY FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF SERVICE EMPLOYEES UNION, LOCAL 204 AFFILIATED WITH THE AFL-CIO-CLC ON OCTOBER 27, 1971, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 92(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

8. A REPRESENTATION VOTE WILL BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT. ALL EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

9. VOTERS WILL BE GIVEN A CHOICE BETWEEN CANADIAN UNION OF PUBLIC EMPLOYEES AND SERVICE EMPLOYEES UNION, LOCAL 204 AFFILIATED WITH THE AFL-CIO-CLC AND NO TRADE UNION.

10. THE MATTER IS REFERRED TO THE REGISTRAR.

1058-71-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) v. DELLELCE CONSTRUCTION AND EQUIPMENT AND DELL CONSTRUCTION (SUDBURY) (RESPONDENTS) v. UNITED STEELWORKERS OF AMERICA (INTERVENER).

BEFORE: FRANK V. BOSCARIOL, VICE-CHAIRMAN AND BOARD MEMBERS P. J. O'KEEFFE AND H. F. IRWIN.

APPEARANCES AT THE HEARING: A. MINSKY, R. KOSKIE AND H. HERRON FOR THE APPLICANT; H. A. DOIG, AND S. C. BERNARDO FOR THE RESPONDENTS; J. A. RYDER, A. DESBIENS AND C. PALIARE FOR THE INTERVENER.

DECISION OF THE BOARD:

JANUARY 19, 1972.

1. THE APPLICANT IS APPLYING, PURSUANT TO THE PROVISIONS OF SECTION 55 OF THE LABOUR RELATIONS ACT, FOR A DECLARATION THAT AS A RESULT OF THE SALE OF THE BUSINESS OF DELL CONSTRUCTION (SUDBURY), TO DELLELCE CONSTRUCTION AND EQUIPMENT, THE LATTER IS BOUND BY A COLLECTIVE AGREEMENT WHICH WAS IN EFFECT BETWEEN THE APPLICANT AND THE SUDBURY CONSTRUCTION ASSOCIATION, HEREINAFTER REFERRED TO AS THE ASSOCIATION.

2. THE EVIDENCE DISCLOSES THAT SINCE MARCH 15, 1966, T. DELLELCE AND CO. LTD. HAS CARRIED ON THE BUSINESS OF OPERATORS AND RENTAL AGENTS FOR HEAVY DUTY CONSTRUCTION EQUIPMENT UNDER THE NAME OF DELL CONSTRUCTION (SUDBURY), HEREINAFTER REFERRED TO AS "DELL". SINCE SEPTEMBER 1, 1968, DELLELCE CONSTRUCTION AND EQUIPMENT, HEREINAFTER REFERRED TO AS "DELLELCE", HAS CARRIED ON THE BUSINESS OF TRUCKING AND TRANSPORTING OF GOODS TOGETHER WITH PROVIDING TRUCK AND EQUIPMENT RENTALS AND FLOAT SERVICES. "DELLELCE" IS IN FACT A PARTNERSHIP COMPOSED OF THREE MEMBER COMPANIES, VIZ., NICK DELLELCE LIMITED, T. ENRICO DELLELCE JR. LIMITED AND PETER MICHAEL DELLELCE LIMITED. THE PARTIES ARE IN AGREEMENT THAT BOTH "DELL" AND "DELLELCE" WERE, AT ALL RELEVANT TIMES, UNDER THE COMMON CONTROL AND OWNERSHIP OF THE DELLELCE FAMILY ENTERPRISE. IT WOULD FURTHER APPEAR THAT WHILE THE BUSINESS OF "DELLELCE" IS TRUCKING, ITS MAIN INTERESTS LIE IN PROVIDING TRUCK AND EQUIPMENT RENTAL SERVICES TO THE INTERNATIONAL NICKEL COMPANY OF CANADA AND TO THE CITY OF SUDBURY. "DELL", ON THE OTHER HAND, APPEARS TO HAVE REPRESENTED THE CONSTRUCTION PORTION OF THIS COMPLEX FAMILY ENTERPRISE. IT IS RELEVANT TO NOTE AT THIS POINT THAT AT NO TIME WAS OWNERSHIP OF ANY EQUIPMENT VESTED IN "DELL". ALTHOUGH THE EXACT RELATIONSHIP EXISTING BETWEEN THE TWO ENTITIES IS NOT READILY DISCERNED FROM THE EVIDENCE, IT IS NEVERTHELESS CLEAR THAT PRIOR TO AUGUST 6, 1971, "DELL" ASSUMED RESPONSIBILITY ONLY FOR THE OPERATION OF THE EQUIPMENT WHILE "DELLELCE", ON THE OTHER HAND, RETAINED OWNERSHIP AND THE CONTRACTS INCIDENTAL TO THEIR OPERATION. IT WAS FURTHER AGREED THAT "DELL" HAD, IN EFFECT, NO ASSETS ASIDE FROM ITS EMPLOYEES. AT ALL RELEVANT TIMES, BOTH ENTITIES CONDUCTED THEIR OPERATIONS FROM AN OFFICE LOCATED AT 234 BESSIE STREET IN THE CITY OF SUDBURY. SERVICES AND OPERATIONAL EXPENSES WERE SHARED. THE EVIDENCE FURTHER DISCLOSES THAT MR. NICHOLAS DELLELCE EXERCISED ULTIMATE MANAGEMENT AND CONTROL OVER "DELL" AND "DELLELCE". PRIOR TO AUGUST 6, 1971, MR. BORIS MIHELCHIC HANDLED MOST OF "DELL'S" OPERATIONS IN HIS CAPACITY AS GENERAL MANAGER. AFTER THIS DATE IT WOULD APPEAR THAT HIS RESPONSIBILITIES WERE TRANSFERRED OVER TO "DELLELCE" WHEREIN HE ASSUMED THE CAPACITY OF GENERAL MANAGER.

3. THE HISTORY OF EVENTS LEADING UP TO THIS APPLICATION IS AS FOLLOWS: PURSUANT TO A COLLECTIVE AGREEMENT DATED DECEMBER 21, 1964 (EXHIBIT #16), THE APPLICANT WAS RECOGNIZED BY THE ASSOCIATION AS THE BARGAINING AGENT FOR ALL OF ITS EMPLOYEES "ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, TOWER HOIST OPERATORS, COMPRESSOR OPERATORS, THOSE PRIMARILY ENGAGED IN REPAIRING SAME

AND OILERS AND MOBILE CRANE DRIVERS", SUBJECT TO CERTAIN MANAGERIAL EXCLUSIONS NOT HERE RELEVANT. "DELL" SUBSEQUENTLY TOOK OUT MEMBERSHIP IN THE ASSOCIATION, AND BY MEMORANDUM OF AGREEMENT ENTERED INTO ON MAY 10, 1966, (EXHIBIT #8), AGREED TO BE BOUND BY THE TERMS OF THE AFORESAID COLLECTIVE AGREEMENT.

4. ON SEPTEMBER 5, 1969, "DELL" ENTERED INTO A COLLECTIVE AGREEMENT (EXHIBIT #9), WITH THE APPLICANT EFFECTIVE FROM AUGUST 25, 1969 TO APRIL 30, 1971, WHEREIN THE APPLICANT WAS RECOGNIZED AS BARGAINING AGENT FOR ALL OF DELL'S EMPLOYEES ENGAGED IN OPERATING, REPAIRING, MAINTAINING AND SERVICING OF CERTAIN CONSTRUCTION EQUIPMENT AS DESCRIBED IN A SCHEDULE APPENDED THERETO. BY LETTER DATED FEBRUARY 3, 1971, (EXHIBIT #10), THE APPLICANT NOTIFIED "DELL" THAT NOTICE HAD BEEN GIVEN TO THE ASSOCIATION OF THE FORMER'S DESIRE TO AMEND THIS COLLECTIVE AGREEMENT. ON MAY 26, 1971, THE APPLICANT APPLIED TO THE MINISTER FOR CONCILIATION SERVICES IN THIS MATTER (EXHIBIT #11). FOLLOWING THE INTERVENTION OF A CONCILIATION OFFICER, THE PARTIES WERE INFORMED ON JULY 14, 1971, THAT A CONCILIATION BOARD WOULD NOT BE APPOINTED. FOLLOWING THE TERMINATION OF A CONSTRUCTION-WIDE STRIKE IN THE SUDBURY AREA, WHICH HAD COMMENCED ON OR ABOUT AUGUST 15, 1971, THE ASSOCIATION ENTERED INTO A COLLECTIVE AGREEMENT (EXHIBIT #15), WITH THE APPLICANT, WHICH WAS EFFECTIVE FROM SEPTEMBER 7, 1971, TO APRIL 30, 1973. THE APPLICANT WAS RECOGNIZED THEREIN AS THE BARGAINING AGENT FOR ALL EMPLOYEES OF THE ASSOCIATION COVERED BY THE CLASSIFICATIONS AS SET OUT IN ARTICLE 14 OF THAT AGREEMENT. THERE IS NO QUESTION THAT AT THIS TIME, "DELL" WAS STILL A MEMBER OF THE ASSOCIATION. IN THE MEANTIME, ON JULY 12, 1971, "DELLELCE" PURPORTED TO ENTER INTO A COLLECTIVE AGREEMENT (EXHIBIT #20) WITH THE INTERVENOR HEREIN, COVERING AN ALL EMPLOYEE UNIT, WHICH WAS MADE RETROACTIVE TO JULY 1, 1971. THIS AGREEMENT SUBSEQUENTLY BECAME THE SUBJECT OF A TERMINATION APPLICATION BROUGHT BY THE APPLICANT HEREIN BEFORE A PANEL OF THE BOARD DIFFERENTLY CONSTITUTED THAN IN THE INSTANT CASE. (SEE THE DELLELCE CONSTRUCTION LIMITED CASE, BOARD FILE NO. 1046-71-R). FOR THE REASONS AS DESCRIBED IN THAT DECISION DATED DECEMBER 6, 1971, THIS COLLECTIVE AGREEMENT WAS, IN EFFECT, SET ASIDE BY THE BOARD. IN ANY EVENT, IT WAS THIS AGREEMENT THAT "DELLELCE" SUBSEQUENTLY UTILIZED IN ITS ATTEMPT TO ENCOMPASS THE EMPLOYEES DESCRIBED IN EXHIBIT #15.

5. THE EVIDENCE SURROUNDING DELL'S DISCONTINUANCE OF OPERATIONS IS AS FOLLOWS: BY LETTER DATED JULY 23, 1971, (EXHIBIT #14), MR. MIHELCHIC IN HIS CAPACITY AS "DELL'S" GENERAL MANAGER, (AS HE THEN WAS), NOTIFIED THE APPLICANT THAT "OWING TO THE RE-ORGANIZATION OF DELLELCE CONSTRUCTION AND EQUIPMENT, DELL CONSTRUCTION (SUDBURY) WILL BE PHASING OUT OF EXISTENCE WITHIN THE NEXT 30 DAYS." ENCLOSED WITH THIS NOTICE WAS A SAMPLE LETTER ADDRESSED TO ALL OF THE "DELL" EMPLOYEES WHO HAD TAKEN OUT MEMBERSHIP IN THE APPLICANT. THE FIRST PARAGRAPH IN THIS LETTER IS IDENTICAL TO THAT IN THE ABOVE QUOTED STATEMENT AND CONTINUES AS FOLLOWS:

"BECAUSE OF YOUR VALUED SERVICE TO DELL CONSTRUCTION (SUDBURY), DELLELCE CONSTRUCTION AND EQUIPMENT WILL ACCEPT YOUR APPLICATION FOR EMPLOYMENT WITHIN THE NEXT 15 DAYS. APPLICATION WILL BE TAKEN BY MYSELF OR RAY FAUCON, AND WE SHALL BE PLEASED TO DISCUSS THIS WITH YOU.

ON BEHALF OF DELL CONSTRUCTION (SUDBURY), I WANT TO EXPRESS MY APPRECIATION OF YOUR PAST LOYAL SERVICE. I EARNESTLY HOPE THAT YOU WILL TAKE THE OPPORTUNITY TO ACCEPT EMPLOYMENT WITH DELLELCE CONSTRUCTION AND EQUIPMENT."

6. IN THIS REGARD, THE APPLICANT ADDUCED EVIDENCE FROM THREE OF ITS MEMBERS, EACH OF WHOM HAD BEEN EMPLOYEES OF "DELL" AT THE RELEVANT TIME. THE TESTIMONY OF DONALD FERGUSON DISCLOSES THAT HE WAS EMPLOYED AS A PITMAN AND BOOM TRUCK OPERATOR. HE FURTHER STATED THAT HE RECEIVED WITH HIS CHEQUE THE LETTER REFERRED TO IN PARAGRAPH #5 HEREIN ON JULY 23, 1971. UPON ENQUIRING INTO ITS CONTENTS, HE WAS INFORMED BY MR. MIHELCHIC THAT "THEY WERE CHANGING OVER TO STEEL," AND THAT HIS WAGES WOULD BE REDUCED ACCORDINGLY. THE WITNESS FURTHER STATED THAT HE WAS THEN HANDED A "STEEL" APPLICATION FOR MEMBERSHIP CARD AND ASKED BY MR. MIHELCHIC TO SIGN IT. WHEN THE WITNESS INDICATED THAT HE WANTED TIME TO THINK IT OVER, MR. MIHELCHIC REPLIED THAT HE HAD UNTIL THE END OF THE MONTH TO MAKE UP HIS MIND AS THERE WOULD BE NO WORK FOR THESE EMPLOYEES WHO FAILED TO SIGN UP IN THE INTERVENER BY THAT TIME. THE WITNESS FINALLY SIGNED THE CARD ON JULY 30, 1971, WHEN HE AGAIN APPEARED BEFORE MR. MIHELCHIC. ON THIS OCCASION, MR. NICHOLAS DELLELCE ENTERED THE OFFICE AND TOLD THE WITNESS "TO TRY IT FOR A COUPLE OF WEEKS AND IF YOU DON'T LIKE IT, JUST QUIT". JIM VALLIQUETTE, A DOZER AND LOADER OPERATOR, TESTIFIED THAT AFTER RECEIVING THE SAID LETTER, HE CONTACTED RAY FAUCON AND WAS INFORMED BY THE LATTER "ALL YOU HAVE TO DO IS TO SIGN A STEEL CARD" AND "WE WOULD LIKE TO KEEP YOU ON." THE WITNESS FURTHER STATED THAT WHILE ON HIS WAY OVER TO THE TRAILER WHERE HE WAS GOING TO SIGN THE CARD, HE MET MR. NICHOLAS DELLELCE WHO TOLD HIM THAT "HE WAS LOSING JOBS BECAUSE EVERYBODY WAS UNDERBIDDING HIM." LAURIER MONETTE, A DOZER OPERATOR, TESTIFIED THAT HE RECEIVED THE SAID LETTER ON JULY 23, 1971, BUT DID NOT MAKE ANY ENQUIRIES INTO THE MATTER.

7. AS REGARDS WHAT POSITIONS THESE EMPLOYEES OCCUPIED UPON THEIR RETURN TO WORK EITHER IMMEDIATELY PRIOR TO THE STRIKE OR UPON ITS CESSATION, FERGUSON WAS OF THE OPINION THAT THE NATURE OF HIS JOB HAD NOT CHANGED WHEN HE WENT BACK TO WORK. VALLIQUETTE, UPON HIS RETURN, STATED THAT HE WAS OCCUPIED IN THE SAME FUNCTION HE HAD BEEN PERFORMING BEFORE, NAMELY, MOVING TRACK. ALTHOUGH MONETTE TESTIFIED THAT UPON HIS RETURN TO WORK AT COPPERCLIFF, "I WAS STILL THERE WORKING AS USUAL", HE DID INDICATE THAT HE WAS SUBSEQUENTLY EMPLOYED AT OTHER

TASKS. MR. NICHOLAS DELLELCE CATEGORICALLY STATED THAT, IN HIS OPINION, FOLLOWING THE CESSATION OF "DELL'S" OPERATIONS ON AUGUST 6, 1971, THE EMPLOYEES IN QUESTION WERE NOT DOING THE SAME WORK. HAVING CAREFULLY REVIEWED THE TOTALITY OF THE EVIDENCE IN THIS REGARD, WHICH AT TIMES WAS RATHER NEBULOUS AND CONFLICTING, WE ARE NEVERTHELESS SATISFIED THAT IN SUBSTANCE, THE NATURE OF THE WORK PERFORMED BY THESE EMPLOYEES UPON THEIR RETURN TO WORK, REMAINED ESSENTIALLY UNCHANGED. WE THEREFORE DO NOT FIND THAT THERE HAS BEEN IN INTERMINGLING OF EMPLOYEES IN THESE CIRCUMSTANCES AS ALLEGED BY THE INTERVENER.

8. THE QUESTION NOW TO BE DETERMINED BY THIS BOARD IS WHETHER, UNDER ALL OF THE CIRCUMSTANCES OF THIS CASE, "DELL" WAS IN EFFECT SOLD ITS BUSINESS TO "DELLELCE" WITHIN THE MEANING OF SECTION 55 OF THE LABOUR RELATIONS ACT. SECTION 55(1)(B) DEFINES THE TERM "SELLS" TO INCLUDE "...TRANSFERS AND ANY OTHER MANNER OF DISPOSITION, AND "SOLD" AND "SALE" HAVE CORRESPONDING MEANINGS". THERE IS NO QUESTION THAT THE BOARD HAS, IN THE PAST, GIVEN THIS SECTION, [FORMERLY SECTION 47(A)], A LIBERAL CONSTRUCTION. FURTHER, THE BOARD HAS FOUND THAT A "SALE" HAS TAKEN PLACE "ALTHOUGH THE EXACT NATURE OF THE TRANSACTION IS LEFT TO SPECULATION." SEE THE SUPER CITY DISCOUNT FOODS LIMITED CASE, OLRB M.R. APRIL 1970, PAGE 118 AT PAGE 119. IN THAT CASE, THE BOARD IN FINDING THAT THE TRANSACTION CONSTITUTED A SALE, STATED AT PAGE 119:

"IN REACHING THIS DETERMINATION, WE HAVE HAD REGARD FOR THE FACT THAT SUBSTANTIALLY THE SAME TYPE OF OPERATIONS HAS BEEN CARRIED ON AT THE SAME LOCATIONS BY THE SAME EMPLOYEES WHOSE EMPLOYMENT CONTINUED WITHOUT INTERRUPTION AND THEY WERE AT ALL TIMES SUPERVISED AND MANAGED BY THE SAME MANAGERIAL STAFF. THESE OPERATIONS HAVE BEEN CARRIED ON BY RELATED COMPANIES WHICH SHARE THE SAME TOP LEVEL MANAGEMENT AND THE SAME BUYING, MARKETING AND SERVICE FACILITIES. HAVING REGARD TO THE NATURE OF THE RELATIONSHIP BETWEEN THE TWO CORPORATE RESPONDENTS AND IN THE ABSENCE OF ANY EVIDENCE WHICH MIGHT LEAD TO A CONTRARY CONCLUSION AND IN VIEW OF THE FACT THAT THERE WAS NO WRITTEN AGREEMENT BETWEEN THEM COVERING THE TRANSACTION, WE MUST CONCLUDE THAT THE FINANCIAL ASPECTS OF THE TRANSACTION WERE COVERED BY BOOK ENTRIES BETWEEN THE TWO COMPANIES (IF WE ASSUME THAT SEPARATE BOOKS ARE KEPT). WE ARE NOT CONCERNED HERE WITH TWO UNRELATED COMPANIES WHICH HAVE ENTERED INTO AN ARM'S LENGTH TRANSACTION. THE TWO COMPANIES OPERATIONS AND MANAGEMENT WERE SO INTERRELATED THAT NO FORMAL DOCUMENTATION OF THE TRANSACTIONS WAS APPARENTLY REQUIRED."

THESE FACTS BEAR A CLOSE RESEMBLANCE TO THE SITUATION IN THE INSTANT CASE, WHERE THE EMPLOYEES AFFECTED DID RETURN TO SUBSTANTIALLY SIMILAR JOBS (SEE PARAGRAPH #7 IN THIS CONNECTION). ASIDE FROM THE STRIKE, THEIR EMPLOYMENT WAS UNINTERRUPTED, AND THEY WERE AT ALL RELEVANT TIMES MANAGED BY MR. DELLELCE AND MR. MIHELCHIC (SEE PARAGRAPH #2). HAVING REGARD TO THE RELATIONSHIP OF "DELL" AND "DELLELCE", (AS DESCRIBED IN PARAGRAPH #2 HEREIN), AND HAVING REGARD TO THE AGREEMENT OF THE PARTIES CONCERNING THEIR COMMON CONTROL AND OWNERSHIP, WE FIND THAT THESE ENTITIES WERE IN FACT "RELATED" IN THE CONTEXT AS USED IN THE SUPER CITY DISCOUNT FOODS CASE (SUPRA). HOWEVER, THIS IS NOT TO BE TAKEN AS A FINDING BY THIS BOARD PURSUANT TO THE PROVISIONS OF SECTION 1(4) OF THE ACT. FURTHER, THERE IS NO QUESTION THAT THE TWO ENTITIES DID SHARE SERVICE AND OFFICE FACILITIES TOGETHER. WE ALSO NOTE THE LACK OF DOCUMENTATION COVERING THE ALLEGED "PHASE OUT" OF "DELL" AND THE SUBSEQUENT INCORPORATION OF ITS ACTIVITIES BY "DELLELCE". IN THIS RESPECT, WE WOULD ALSO NOTE THAT NO FORMAL APPLICATION FOR EMPLOYMENT IN "DELLELCE" WAS REQUIRED OF THE EMPLOYEES AFFECTED, NOR WERE THEY ASKED TO SIGN NEW "T.D. 1" FORMS. FINALLY, THERE CAN BE NO DOUBT THAT DEALINGS BETWEEN THE TWO ENTITIES IN THIS RESPECT WERE NOT AT ARM'S LENGTH.

9. HAVING REGARD THEREFORE TO THE TOTALITY OF THE EVIDENCE IN THIS MATTER, HEARD BEFORE US ON DECEMBER 16 AND 17, 1971, AND TAKING INTO ACCOUNT THE EXTENSIVE REPRESENTATIONS OF THE PARTIES THERETO, ON JANUARY 4 AND 10, 1972, WE FIND THAT THE TRANSACTION, EFFECTIVE AUGUST 6, 1971, IN THESE CIRCUMSTANCES, CONSTITUTED A SALE OF THE "DELL" BUSINESS TO "DELLELCE."

10. PURSUANT TO THE PROVISIONS OF SECTION 55 OF THE ACT, WE ACCORDINGLY DECLARE THAT DELLELCE CONSTRUCTION AND EQUIPMENT IS BOUND BY THE COLLECTIVE AGREEMENT (EXHIBIT #15), ENTERED INTO BY THE APPLICANT AND THE SUDBURY CONSTRUCTION ASSOCIATION.

916-71-M: NORMAN JOHN FRIEND (APPLICANT) V. THE CANADIAN UNION OF PUBLIC EMPLOYEES, AND ITS LOCAL NO. 1196 (RESPONDENT TRADE UNION) V. THE YORK COUNTY BOARD OF EDUCATION (RESPONDENT EMPLOYER).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS O. HODGES AND J.E.C. ROBINSON, Q.C.

APPEARANCES AT THE HEARING: NORMAN JOHN FRIEND, WILLIAM R. HERRIDGE, Q.C., AND GERALD VANDEZANDE FOR THE APPLICANT; T. E. ARMSTRONG AND E. ROVET FOR THE RESPONDENT TRADE UNION; ALEXANDER SMART FOR THE RESPONDENT EMPLOYER.

DECISION OF J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBER J.E.C. ROBINSON, Q.C.: JANUARY 19, 1972.

1. THIS IS AN APPLICATION PURSUANT TO THE PROVISIONS OF SECTION 39 OF THE LABOUR RELATIONS ACT.

2. THE RESPONDENT UNION RAISED, BY WAY OF PRELIMINARY OBJECTION, THE TIMELINESS OF THIS APPLICATION. THE APPLICANT WAS AN EMPLOYEE OF THE RESPONDENT EMPLOYER ON JANUARY 15, 1971 AND THE COLLECTIVE AGREEMENT IN FORCE BETWEEN THE RESPONDENT TRADE UNION AND THE RESPONDENT EMPLOYER EXPIRED ON AUGUST 31, 1971. THE INSTANT APPLICATION WAS MADE BY THE APPLICANT ON AUGUST 31, 1971. THE RESPONDENT UNION ARGUED THAT THE PROVISIONS OF SECTION 39(2), SUBSECTIONS (A) AND (B) PROVIDE A TEMPORAL LIMITATION WHICH READS "ONLY DURING THE LIFE OF SUCH COLLECTIVE AGREEMENT". IT WAS THE RESPONDENT UNION'S ARGUMENT THAT THE PROVISIONS OF SECTION 39(2) QUALIFY THE APPLICATION OF SUBSECTION (1) OF SECTION 39 AND ACCORDINGLY THE BOARD MAY MAKE THE ORDER CONTEMPLATED IN SECTION 39(1) "ONLY DURING THE LIFE OF SUCH COLLECTIVE AGREEMENT". WHILE WE CONCEDE THAT SUCH AN ARGUMENT IS OPEN TO THE PARTIES UNDER SECTION 39 OF THE ACT, THE INTERPRETATION URGED BY THE RESPONDENT UNION WOULD PLACE THE BOARD IN AN INTOLERABLE POSITION SINCE THE TIME LIMITS FOR MAKING DECISIONS WOULD VARY FROM CASE TO CASE. SECTION 39 CAME INTO FORCE ON FEBRUARY 15, 1971. IT MAY WELL BE THAT MANY COLLECTIVE AGREEMENTS EXPIRED WITHIN DAYS OR WEEKS THEREAFTER. IF THE RESPONDENT UNION'S INTERPRETATION OF SECTION 39 IS CORRECT, A TIMELY APPLICATION MADE IN THE CASE WHERE A COLLECTIVE AGREEMENT HAD ONLY A MATTER OF DAYS TO RUN SUBSEQUENT TO FEBRUARY 15TH WOULD REQUIRE THE BOARD TO MAKE ITS DECISION WITH SUCH UNDUE HASTE THAT IT WOULD BE VIRTUALLY IMPOSSIBLE TO ALLOW FOR THE NECESSARY HEARING, OBTAIN ALL THE RELEVANT EVIDENCE AND GIVE PROPER CONSIDERATION TO SUCH EVIDENCE.

3. APART FROM ANY HARDSHIP CAUSED TO THE BOARD ITSELF, THE INTERPRETATION URGED BY THE RESPONDENT UNION WOULD BE CONTRARY TO WHAT WE CONSIDER TO BE THE NATURAL INTERPRETATION OF THE WORDS USED IN SUBSECTION (2) OF SECTION 39. THE WORDS "ONLY DURING THE LIFE OF SUCH COLLECTIVE AGREEMENT" USED IN SECTION 39(2)(A) AND (B) DEFINE THE TIME WITHIN WHICH AN EMPLOYEE MAY MAKE AN APPLICATION UNDER SECTION 39. THESE TIME LIMITS, IN OUR VIEW, CIRCUMSTANCES THE RIGHT OF EMPLOYEES BUT IN NO WAY LIMIT THE EXERCISE OF THE BOARD'S JURISDICTION IN THIS MATTER. FOR THESE REASONS, THE BOARD ACCORDINGLY FINDS THAT THIS APPLICATION IS TIMELY.

4. HAVING REGARD TO ALL THE EVIDENCE AND THE REPRESENTATIONS OF THE PARTIES, THE BOARD IS SATISFIED THAT THE APPLICANT IS AN EMPLOYEE OF THE RESPONDENT EMPLOYER WHO, BECAUSE OF HIS RELIGIOUS CONVICTION OR BELIEF, OBJECTS TO JOINING THE RESPONDENT TRADE UNION AND OBJECTS TO THE PAYING OF UNION DUES OR OTHER ASSESSMENTS TO THE RESPONDENT TRADE UNION.

5. THE BOARD THEREFORE ORDERS AND DIRECTS THAT THE PROVISIONS OF THE COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT EMPLOYER AND THE

RESPONDENT UNION WHICH ARE OF THE TYPE MENTIONED IN SECTION 38(1)(A) OF THE ACT DO NOT APPLY TO THE APPLICANT AND ACCORDINGLY THE APPLICANT IS NOT REQUIRED TO JOIN THE RESPONDENT UNION, TO BE OR TO CONTINUE TO BE A MEMBER OF THE RESPONDENT UNION OR TO PAY ANY DUES, FEES OR OTHER ASSESSMENTS TO THE RESPONDENT UNION PROVIDED THAT AMOUNTS EQUAL TO ANY INITIATION FEES, DUES OR OTHER ASSESSMENTS ARE PAID BY THE APPLICANT TO OR ARE REMITTED BY THE RESPONDENT EMPLOYER TO A CHARITABLE ORGANIZATION MUTUALLY AGREED UPON BY THE APPLICANT AND THE RESPONDENT TRADE UNION.

6. HOWEVER, IF THE APPLICANT AND THE RESPONDENT TRADE UNION FAIL TO AGREE ON SUCH CHARITABLE ORGANIZATION, THE BOARD, UPON THE REQUEST OF EITHER THE APPLICANT OR THE RESPONDENT UNION, WILL DESIGNATE PURSUANT TO THE PROVISIONS OF SECTION 39(1) OF THE ACT A CHARITABLE ORGANIZATION REGISTERED AS SUCH IN CANADA UNDER PART 1 OF THE INCOME TAX ACT (CANADA).

DECISION OF BOARD MEMBER OLIVER HODGES: JANUARY 19, 1972.

1. I CONCUR WITH THE MAJORITY IN THE MATTER OF TIMELINESS OF THE APPLICATION, AND IN PARTICULAR WITH THE REASONS GIVEN IN PARAGRAPH 3 OF THEIR DECISION.

2. I DISSENT IN THE MATTER OF THE EXEMPTION GRANTED BY THE MAJORITY UNDER 39(1)(B).

39(1) - WHERE THE BOARD IS SATISFIED THAT
AN EMPLOYEE BECAUSE OF HIS RELIGIOUS
CONVICTION OR BELIEF,

(B) OBJECTS TO THE PAYING OF DUES OR
OTHER ASSESSMENTS TO A TRADE UNION,

THE BOARD MAY ORDER, ETC.

3. THE EVIDENCE IN CHIEF OF MR. FRIEND IS THAT HE WAS BORN IN HOLLAND IN 1912, ATTENDED THE CHRISTIAN SCHOOL TO GRADE 8. HE WORKED ON THE FAMILY FLOWER BULB FARM THERE, SERVED IN THE ARMY AND WAS EMPLOYED AS SALES MANAGER FOR A SEED FIRM. IN HOLLAND HE WAS A MEMBER OF THE CNU - THE CHRISTIAN TRADE UNION. HE CAME TO CANADA IN 1951. AT THIS TIME, HE HAD 10 CHILDREN.

4. IN CANADA HE STARTED AS A FARM HAND, WORKED IN A BLANKET FACTORY FOR A SHORT TIME IN LINDSAY AND THEN WAS EMPLOYED FROM NOVEMBER 1951 TO 10TH MAY, 1952, AS A FARM HAND AT ARGYLE. AT THIS TIME HE TOOK EMPLOYMENT OF THE FARM OF BILL HORLINGS IN THE HOLLAND MARSH UNTIL THE FALL OF 1952. MR. FRIEND WAS NEXT EMPLOYED BY COLLIS LEATHER IN AURORA, WHERE HE HAD HIS FIRST CONTACT WITH A NORTH AMERICAN TRADE UNION, THE

UNITED PACKINGHOUSE WORKERS. HE WAS ASKED BY THE UNION STEWARD TO SIGN A DUES DEDUCTION CARD, WHICH HE REFUSED TO DO. HOWEVER, THE EMPLOYER DEDUCTED THE MONEY FROM HIS PAY CHEQUE ANYWAY. MR. FRIEND REMAINED AT COLLIS LEATHER FOR THREE YEARS. DURING THIS TIME HE TALKED TO OTHER EMPLOYEES OF THE SAME FAITH AS HIS OWN AND MADE HIS OBJECTIONS KNOWN TO THE SHOP STEWARD. HE ALSO OBJECTED "SEVERAL TIMES TO THE OFFICE FOR TAKING MONEY WITHOUT MY PERMISSION". HE LEFT COLLIS LEATHER FOR REASONS NOT STATED AT THE HEARING, AND BECAME SELF-EMPLOYED IN LANDSCAPING UNTIL 1960. FROM 1960 TO 1965 HE WORKED AS A HANDYMAN AT THE SUMMIT VIEW RESTAURANT IN RICHMOND HILL AND LEFT THERE TO BECOME CARETAKER OF THE TORONTO DISTRICT CHRISTIAN HIGH SCHOOL AT WOODBRIDGE. THIS INSTITUTION IS NOT TAX SUPPORTED. IT IS OPERATED MOSTLY BY MEMBERS OF THE CHRISTIAN REFORM CHURCH, BUT THERE ARE BOARD MEMBERS FROM OTHER DENOMINATIONS AS WELL, MR. FRIEND TESTIFIED. WHILE EMPLOYED HERE HE MET MR. NORMAN JACKMAN OF WOODBRIDGE, THE PERSONNEL DIRECTOR OF DISTRICT 3 OF THE YORK COUNTY BOARD OF EDUCATION, WHO OFFERED HIM A JOB.

5. ON 24TH AUGUST, 1970, THE APPLICANT BECAME AN EMPLOYEE OF THE YORK COUNTY BOARD OF EDUCATION FOR WHICH HE IS NOW A CARETAKER AT THAT WOODBRIDGE HIGH SCHOOL IN WOODBRIDGE. MR. FRIEND APPROACHED MR. JACKMAN WHEN HE LEFT THE CHRISTIAN SCHOOL, AND "HE GAVE ME A JOB". MR. FRIEND TESTIFIED THAT HE MADE THE CHANGE "BECAUSE THE WORK WAS EASIER AT WOODBRIDGE HIGH SCHOOL." HE WORKED FEWER HOURS AT THE SECULAR SCHOOL THAN AT THE CHRISTIAN SCHOOL.

6. MR. FRIEND OBJECTED TO BECOMING A MEMBER OF C.U.P.E. WHEN HE BECAME EMPLOYED BY THE YORK COUNTY BOARD, AND HE OBJECTED TO PAYING DUES TO THE UNION, "BECAUSE THAT UNION WAS AN ORGANIZATION NOT BASED ON GOD'S WORD. BY BEING A MEMBER I WOULD BE CO-RESPONSIBLE FOR THE WORK OF A NON-CHRISTIAN ORGANIZATION". HE SAID THE WORD OF GOD IS THE BIBLE. "C.U.P.E. IS NON-CHRISTIAN BECAUSE THE BIBLE QUOTES CHRIST AS SAYING "HE WHO IS NOT FOR ME IS AGAINST ME." THE NEUTRAL FACT IS THAT CHRIST IS REJECTED AS HEAD. MR. FRIEND TESTIFIED THAT HE KNEW C.U.P.E. IS NEUTRAL AS A RESULT OF DAILY CONVERSATIONS WITH MEMBERS OF C.U.P.E. THE MEMBERS SAID TO MR. FRIEND, "WHY DO YOU OBJECT - EVERYBODY CAN BE A MEMBER, CHRISTIAN AND NON-CHRISTIAN ALIKE." THIS WAS WRONG, MR. FRIEND TESTIFIED, "BECAUSE OF MY WORLD VIEW OF LIFE - IT WAS IMPOSSIBLE FOR ME AS A CHRISTIAN TO BE A MEMBER OF A NEUTRAL ORGANIZATION TO WHICH I HAVE TO PLEDGE ALLEGIANCE." WITH RESPECT TO THE PAYMENT OF DUES TO A NEUTRAL UNION WITHOUT BEING A MEMBER, MR. FRIEND TESTIFIED THAT PAYMENT OF DUES FURTHERED THE WORK OF THE ORGANIZATION, WHICH MADE HIM CO-RESPONSIBLE FOR IT.

7. MR. FRIEND SAID THAT HE HAD NOT SEEN A UNION CONSTITUTION, BUT THAT HE HAD TRIED TO GET ONE. WHEN THE SECRETARY OF THE BOARD OF EDUCATION GAVE HIM THE AUTHORIZATION FOR DUES DEDUCTION CARD (EXHIBIT 1), HE ASKED HER FOR A COPY OF THE CONSTITUTION. "SHE WAS KIND OF

SURPRISES - NO ONE HAD ASKED HER BEFORE FOR SOMETHING LIKE THAT". MR. FRIEND TOLD HER THAT HE WOULD LIKE TO SEE THAT BEFORE HE SIGNED. HE TOOK THE CARD AT THAT TIME AND HAS HAD IT EVER SINCE. HE HEARD NO MORE FROM THE SECRETARY. HE ASKED FELLOW WORKERS IF THEY HAD ONE OR COULD HELP HIM GET ONE, BUT HE HAS NOT BEEN SUPPLIED WITH A CONSTITUTION. THE DAY TO DAY ACTIVITIES OF THE UNION ARE OBJECTIONABLE INASMUCH AS NOTICES OF MEETINGS INDICATED MEETINGS WERE ALWAYS ON SUNDAY, THE LORD'S DAY. THE LORD CALLED HIM TOGETHER WITH THE CONGREGATION, SO HE GOES TO CHURCH ON SUNDAY. "SIX DAYS DO YOU LABOUR AND ON THE SEVENTH DAY REST - TO DO OTHERWISE WAS CONTRARY TO THE COMMANDMENT". HE OBJECTED ALSO TO C.U.P.E., WHATEVER THEIR ACTIVITY, BECAUSE IT WAS NOT BASED ON THE WORD OF GOD. CONCERNING THE 8 HOUR DAY HE ENJOYED, HE SAID, "MANY TIMES IN LIFE A CHRISTIAN AND A NON-CHRISTIAN DOES THE SAME THING - BUT THE BASIS IS DIFFERENT, THE CHRISTIAN ACTS ON GOD'S WORD AND FOR LOVE OF HIS FELLOW MAN, WHILE THE NON-CHRISTIAN ACTS FOR HUMANISTIC REASONS. THE BASIS IS DIFFERENT BUT THE JOB IS THE SAME". THE HUMANISTIC BASIS WAS WRONG BECAUSE IT IS MAN-CENTERED, AS AGAINST THE CHRISTIAN BASIS THAT IS GOD-CENTERED. GOD PLACED ME ON THIS EARTH TO HIS GLORY AND HIS HONOUR".

8. IN RESPONSE TO A QUESTION BY HIS COUNSEL, THE APPLICANT TESTIFIED THAT HE IS A MEMBER OF THE C.L.A.C. AND HAD BEEN SINCE 1953. HE HELPED ORGANIZE THE VERY FIRST MEETINGS IN HOLLAND MARSH TO ESTABLISH THE C.L.A.C. IN REPLY TO A QUESTION BY THE BOARD, HE SAID THE AIMS THE C.L.A.C. WERE THE "BETTERMENT OF WORKERS WAGES AND SO THE BIBLICAL CONCEPTION OF LIFE IS VERY CLEARLY STATED IN THEIR CONSTITUTION". WHEN HE WENT TO WORK FOR THE YORK COUNTY BOARD OF EDUCATION, HE WAS PRESIDENT OF A GENERAL WORKERS LOCAL OF THE C.L.A.C. RELATED TO FURTHERING THE CAUSE OF CHRISTIAN LABOUR. HE KNEW THAT C.U.P.E. WAS THE UNION AT THE BOARD OF EDUCATION WHEN HE WENT TO WORK THERE. HE REALIZED THAT AT HIS AGE JOBS WERE NOT EASY TO FIND. HE SAID THE BILL OF RIGHTS GAVE HIM THE RIGHT TO WORK AT YORK. DEALING FURTHER WITH HIS KNOWLEDGE OF THE PROBLEMS HE WOULD LIKELY ENCOUNTER BECAUSE OF HIS POINT OF VIEW, HE TESTIFIED "I EXPECTED I COULD COME INTO DIFFICULTY WITH THE UNION. I KNEW I WOULD OBJECT TO COMPULSORY MEMBERSHIP AS A CONDITION OF WORK". QUESTIONED BY COUNSEL CONCERNING HIS ASSURANCE THAT HE WOULD CONTINUE TO WORK WHEN HE WAS PREVIOUSLY AWARE OF THE COMPULSORY DUES AND MEMBERSHIP CONDITIONS EXISTING AT THE BOARD OF EDUCATION, MR. FRIEND SAID HE SAW IN THE NEWSPAPER THAT THE C.L.A.C. AND THE COMMITTEE FOR JUSTICE AND LIBERTY WORKED TOWARD THE ADOPTION OF THE PROVISIONS OF BILL 167 AND THE EXEMPTION FROM UNION DUES AND UNION MEMBERSHIP WHICH WAS PROVIDED THEREBY. "IF C.L.A.C. DID NOT EXIST I WOULD HAVE MADE THE APPLICATION; IT WAS MY OWN IDEA," HE SAID.

9. IN CROSS-EXAMINATION MR. FRIEND TESTIFIED THAT HE HAD WAITED UNTIL THE LAST DAY OF THE OPERATION OF THE COLLECTIVE AGREEMENT BECAUSE THERE WAS FIRST OF ALL TIME ENOUGH BEFORE THE END OF THE CONTRACT. BETWEEN 15TH FEBRUARY 1971, WHEN AN APPLICATION BECAME POSSIBLE AND 31ST

AUGUST 1971, HE HAD AN ACCIDENT AND HAD VISITORS WITH HIM FROM OUT OF THE COUNTRY FOR 10 WEEKS AS WELL. HE SAID HE KNEW HIS TIME THROUGH THE NEWS MEDIA. ASKED IF MR. VANDERSANDE HAD TOLD HIM, THE WITNESS REPLIED "I KNEW THAT MYSELF". HE SAID THAT THE WORDING OF THE APPLICATION WAS BY THE COMMITTEE FOR JUSTICE AND LIBERTY. HIS KNOWLEDGE OF THE C.U.P.E. CONSTITUTION CAME FROM "CONVERSATIONS WITH FELLOW EMPLOYEES AND THE NEWS MEDIA. I HAVE NOT READ THE CONSTITUTION TO THIS DAY". HE SAID THE "GUIDE", A PUBLICATION OF THE C.L.A.C., "DID NOT SAY ANYTHING ABOUT THE C.U.P.E. CONSTITUTION AS SUCH". IN REPLY TO A QUESTION RELATIVE TO SUNDAY MEETINGS OF THE UNION, HE SAID THAT AS HE WAS NOT A MEMBER, THERE WAS NO NECESSITY TO ATTEND AND THAT ATTENDANCE WAS NOT A COMPULSORY MORAL OBLIGATION. AS TO THE OTHER ACTIVITIES OF THE ORGANIZATION TO WHICH HE OBJECTS, HE REITERATED HIS EARLY TESTIMONY AND SAID HE OBJECTED TO ALL OF THE UNION ACTIVITIES SINCE THEY "ARE NOT BASED ON CHRISTIAN ACTIVITY, AND HE THEREFORE COULD NOT BE RESPONSIBLE". REGARDING WHAT THE UNION DID HE HAD NO OBJECTION EXCEPT TO THE MEETINGS ON SUNDAY.

10. MR. FRIEND ADMITTED THE CHRISTIAN REFORMED CHURCH IS A MEMBER OF THE NORTH AMERICAN CHURCH. HE ACCEPTS THE TEACHING OF THE CHURCH. OF THE CHURCH ASSEMBLY, THE HIGHEST AUTHORITY WITHIN THE TEMPORAL ORGANIZATION IS THE SYNOD. THE ELDERS AND DEACONS ARE DELEGATES IN A PARTICULAR CHURCH CONSISTORY. THE CLASSIS IS A GEOGRAPHICAL AREA WHEREIN MEETINGS ARE HELD MORE OFTEN. THE CONSISTORY IS THE LOCAL CHURCH BODY OF OFFICIALS. HE AGREED WITH COUNSEL THAT CHURCH ASSEMBLIES HAVE PRONOUNCED ON NEUTRAL UNIONS, AND HE SAID THAT HE KNEW THE SYNOD HAD A POSITION ON NEUTRAL UNIONS. ASKED ABOUT THE CONSISTORY POSITION, THE WITNESS SAID THEY "MET IN HARMONY WITH GOD'S WORD". HE DIDN'T THINK THE CONSISTORY HELD A VIEW DIFFERENT THAN THE SYNOD. HE WAS THEN ASKED IF HE AGREED WITH THE SYNOD AND HIS ANSWER WAS "NO - IT WAS A POSITION TAKEN SOME TIME AGO, BUT THE CONSISTORY HAVE TO DECIDE". ASKED IF THE CONSISTORY DID NOT AGREE AND WHETHER THE CONSISTORY HAD PUBLISHED A VIEW, HE SAID "THE CONSISTORY WOULD VOTE BUT CAN'T SAY THAT WAS THE PRESENT - A VOTE WAS TAKEN AT MEETINGS WHERE I WAS PRESENT, ONCE." ASKED IF IT WAS DEALT WITH ON ONE OCCASION, HE REPLIED "YES". ASKED WHEN THAT WAS - HE ANSWERED "DURING MY FIVE YEARS AS BEING AN ELDER". THE TEXT OF THAT RESOLUTION WAS "THAT CONSISTORY SAYS IT NOT POSSIBLE FOR CONFESSING MEMBER TO GIVE ALLEGIANCE TO NEUTRAL OR ANY OTHER UNIONS THAT REQUIRE ALLEGIANCE". THE WITNESS SAID THAT THERE WERE NEUTRAL UNION MEMBERS IN THE CONGREGATION AND THEY WERE NOT CENSORED BY THE CHURCH, BECAUSE IT WAS UP TO THE INDIVIDUAL TO DECIDE. HOWEVER, HE TESTIFIED THERE WAS A POSSIBILITY OF CHURCH DISCIPLINE. CONCERNING THE DECISIONS OF THE CHURCH, MR. FRIEND SAID "THE SYNOD DECISION CONFLICTS WITH THE WORD OF GOD. I DON'T AGREE WITH THE SYNOD DECISION".

11. THE WITNESS WHO HAD TESTIFIED THAT HIS KNOWLEDGE CONCERNING THE C.U.P.E. CONSTITUTION AND RELIGIOUS POSTURE WERE BASED ON DISCUS-

SIONS WITH FELLOW EMPLOYEES, REPLIED IN THE NEGATIVE WHEN ASKED WHETHER HE HAD TALKED TO THE UNION LEADERSHIP ABOUT THESE QUESTIONS. HE SAID THAT HE HAD SENT A REGISTERED LETTER REQUESTING A COPY OF THE CONSTITUTION "THURSDAY OR FRIDAY OF LAST WEEK". HE HAD ALSO REQUESTED A COPY OF THE CONSTITUTION FROM PARTRIDGE, AN OFFICER OF THE LOCAL UNION.

12. IN RESPONSE TO QUESTIONS ASKED BY COUNSEL FOR THE RESPONDENT UNION, THE WITNESS REPEATED THAT HE WAS A MEMBER OF THE C.L.A.C. SINCE 1953. HE AGREED THAT THE C.L.A.C. WAS A TRADE UNION RECOGNIZED BY THE ONTARIO LABOUR RELATIONS BOARD. ASKED BY COUNSEL WHETHER HIS ATTITUDE WAS ONE OF ANIMUS TOWARD TRADE UNION PRACTICE, DID HE WANT MINORITY REPRESENTATION AND WAS THAT A PRINCIPLE OF THE C.L.A.C., THE WITNESS SAID "I AGREE". ASKED IF HE UNDERSTOOD THAT AMENDMENT TO THE ACT WOULD BE REQUIRED TO ACHIEVE MINORITY REPRESENTATION, HE SAID THAT HIS APPLICATION FOR EXEMPTION UNDER SECTION 39 "WAS A STEP IN THAT DIRECTION". ASKED IF HE CONTEMPLATED THAT WHEN HE MOVED TO TAKE THE JOB WITH THE YORK BOARD OF EDUCATION, HIS PRESENT JOB, HE SAID "YES". ASKED IF IT WAS TAKEN AS AN OPPORTUNITY TO FORWARD THOUGHTS REGARDING MINORITY REPRESENTATION, THE WITNESS SAID HE "HAD NOT BEEN ABLE TO PURSUE THAT". THE WITNESS CONTINUED, SAYING, "CHRIST SAID, 'GO FORWARD AND PREACH TO ALL RELIGIONS'. IN THE C.L.A.C., YOU RESTRICT YOURSELF AND ARE NOT DEFILED WITH CONTACT WITH OTHER UNIONS". THE WITNESS TESTIFIED HE WANTS A MINORITY PARALLEL COLLECTIVE AGREEMENT. HE SAID HE DIDN'T THINK THE PRESENT UNION WOULD WANT TO CO-OPERATE IN MAKING JOINT DEMANDS TO THE EMPLOYER.

13. ON RE-EXAMINATION MR. FRIEND TESTIFIED AS TO THE STRIKE POLICY OF THE CNU, IN REPLY TO A QUESTION BY THE BOARD. FROM HIS KNOWLEDGE AS A UNION OFFICER AND BOARD MEMBER IN HOLLAND, THE STRIKE WAS EMPLOYED BY THE CHRISTIAN UNIONS THERE "AS A LAST RESORT". HE FURTHER TESTIFIED THAT HE THOUGHT THE SAME POLICY REGARDING STRIKES WAS FOLLOWED BY THE C.L.A.C. IN CANADA.

14. THE EVIDENCE IN THIS CASE ESTABLISHES CLEARLY THE INTEREST OF THE APPLICANT AS A TRADE UNIONIST SEEKING THE GROWTH OF HIS ORGANIZATION. HE MEANS TO ADVANCE THE INTERESTS OF THE C.L.A.C. BY LEAVING A JOB IN A CHRISTIAN SCHOOL WHERE HE WORKS HARD FOR LONG HOURS, AND GETTING A JOB IN A SECULAR SCHOOL WHERE THE WORK IS EASIER AND THE HOURS SHORTER. THAT MR. FRIEND MOVED FOR REASONS THAT GAVE HIM PHYSICAL COMFORT AND TEMPORAL BENEFIT IS FORTUNATE AND CONVENIENT FOR HIS PURPOSE. THE BEST OF BOTH WORLDS, TEMPORAL AND SPIRITUAL, IS SOUGHT BY MOST MEN BUT RARELY ACHIEVED. HOWEVER, MR. FRIEND ENJOYS THE FRUITS OF THE LABOURS OF HIS FELLOW WORKERS' UNION, WHILE SEEKING TO WEAKEN ITS EFFECTIVENESS BY DENYING THE UNION HIS DUES UNDER THE PROVISIONS OF SECTION 39. HE IS TAKING A STEP IN THE DIRECTION OF MINORITY REPRESENTATION, HE TESTIFIED. HE IS ENTITLED TO HIS VIEW; AND TO HIS MINORITY REPRESENTATION, PROVIDED HE CAN MUSTER THE SUPPORT NECESSARY

TO CHANGE THE LEGISLATION. BUT THE ACT DOES NOT NOW PROVIDE FOR THAT FORM OF REPRESENTATION. I CANNOT FIND THAT THIS APPLICATION FOR EXEMPTION IS MADE ON THE GROUND OF "RELIGIOUS CONVICTION AND BELIEF". SECTION 39 IS NOT A BACK DOOR BY WHICH A PREFERENCE FOR A RELIGIOUS UNION CAN BE ADVANCED.

15. THE APPLICATION ITSELF IS PREPARED BY THE COMMITTEE ON JUSTICE AND LIBERTY, AND THE WITNESS SIGNS IT. REASONS GIVEN THEREIN ARE CONTRADICTED BY HIS EVIDENCE IN THE WITNESS BOX. ITEM (2) OF HIS APPLICATION STATES "THE CANADIAN UNION OF PUBLIC EMPLOYEES, AND ITS LOCAL No. 1196 DOES NOT IN ITS CONSTITUTION EXPRESSLY ACKNOWLEDGE THE BIBLE NOR GIVE EXPRESSION TO THE PRINCIPLES OF THE BIBLE". MR. FRIEND HOWEVER TESTIFIED UNEQUIVOCALLY THAT HE HAD NEVER READ THE CONSTITUTION.

16. MR. FRIEND'S BEHAVIOUR IS NOT THAT OF A PERSON SUFFERING A SPIRITUAL HARDSHIP. HIS APPLICATION IS MADE CASUALLY. MY VIEW IS THAT MR. VANDERSANDE OF THE COMMITTEE ON JUSTICE AND LIBERTY GOT TO HIM ON THE LAST DAY. IN CROSS-EXAMINATION ON THAT POSSIBILITY, HIS REPLY TO QUESTIONS WAS NOT ALTOGETHER DIRECT.

17. CONSIDERING ALL OF THE EVIDENCE AND IN THE PARTICULAR CIRCUMSTANCES OF THIS CASE, I FIND THE APPLICANT NOT ENTITLED TO EXEMPTION FROM UNION DUES UNDER THE PROVISION OF SECTION 39(1)(B). HOWEVER, I WOULD ALSO HAVE FOUND THAT HE WAS ENTITLED TO EXEMPTION UNDER SECTION 39(1)(A), HAD THAT BEEN IN ISSUE, FOR REASONS GIVEN BY ME IN THE CASE OF ANTHONY J. VIS, BOARD FILE 139-70-M CHAIRMAN O. B. SHIME.

728-71-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA (APPLICANT) v. BIRMINGHAM CONSTRUCTION LIMITED (RESPONDENT).

BEFORE: J.H. BROWN, Q.C., ALTERNATE CHAIRMAN AND BOARD MEMBERS E. BOYER AND F.W. MURRAY.

DECISION OF THE BOARD: JANUARY 20, 1972.

1. IN A DECISION DATED JULY 29, 1971, THE BOARD APPOINTED AN EXAMINER IN THIS MATTER IN ORDER TO OBTAIN EVIDENCE ON THE ISSUES IN DISPUTE BETWEEN THE PARTIES.

2. FROM TIME TO TIME THE PARTIES HAVE REQUESTED ADJOURNMENTS IN THE MEETINGS WHICH THE EXAMINER HAS ATTEMPTED TO ARRANGE AND HAVE INDICATED IMMINENT RESOLUTION OF THE CONTENTIOUS ISSUES IN THIS APPLICATION. HOWEVER, IT IS QUITE CLEAR FROM THE CORRESPONDENCE FROM THE PARTIES TO THE BOARD THAT THE PARTIES ARE IN FACT NO CLOSER TO A RESOLUTION OF THE CONTENTIOUS ISSUES IN THIS APPLICATION AT THIS TIME THAN THEY WERE IN JULY, 1971.

3. IN A TELEGRAM RECEIVED BY THE BOARD ON AUGUST 9, 1971, THE RESPONDENT ADOPTED THE POSITION THAT THE BOARD IS WITHOUT JURISDICTION TO ENTERTAIN THIS APPLICATION BECAUSE THE SUBJECT MATTER OF THE UNDERTAKING AFFECTED BY THIS APPLICATION IS UNDER FEDERAL JURISDICTION.
4. HAVING REGARD TO THE FOREGOING, THE APPOINTMENT OF MR. J.E. LEONARD, EXAMINER, IN THIS MATTER DATED JULY 29, 1971 IS HEREBY REVOKED.
5. THE REGISTRAR IS DIRECTED TO LIST THIS APPLICATION FOR HEARING ON THE QUESTION OF THE JURISDICTION OF THE BOARD TO ENTERTAIN THIS APPLICATION.
6. THE MATTER IS REFERRED TO THE REGISTRAR.

223-71-M: EGBERT WITTEN (APPLICANT) V. THE CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 44, RECREATION DEPARTMENT (RESPONDENT TRADE UNION) V. THE CORPORATION OF THE TOWN OF BURLINGTON (RESPONDENT EMPLOYER).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS A. MAIN AND W. H. WIGHTMAN.

DECISION OF THE BOARD: JANUARY 20, 1972.

1. THE BOARD IN PARAGRAPH 4 OF ITS DECISION OF DECEMBER 13, 1971 IN THIS MATTER RECORDED ITS UNDERSTANDING THAT THE APPLICANT AND THE RESPONDENT TRADE UNION HAD AGREED THAT IN THE EVENT THE BOARD SHOULD EXEMPT THE APPLICANT FROM THE PAYMENT OF ANY DUES OR OTHER ASSESSMENTS TO THE RESPONDENT TRADE UNION, AN AMOUNT EQUAL TO SUCH DUES OR OTHER ASSESSMENTS WOULD BE PAID BY THE APPLICANT OR REMITTED BY THE RESPONDENT EMPLOYER TO THE CANADIAN RED CROSS SOCIETY.
2. BY LETTER DATED JANUARY 11, 1972, COUNSEL FOR THE RESPONDENT TRADE UNION ADVISED THE BOARD THAT THE RESPONDENT UNION HAD NOT AGREED TO THE DESIGNATION OF THE CANADIAN RED CROSS SOCIETY AS THE CHARITABLE ORGANIZATION TO WHICH ANY DUES OR OTHER ASSESSMENTS WOULD BE PAID IN THE EVENT THAT THE BOARD EXEMPTED THE APPLICANT FROM THE PAYMENT OF ANY DUES OR OTHER ASSESSMENTS TO THE RESPONDENT TRADE UNION. ACCORDING TO COUNSEL, THE RESPONDENT TRADE UNION HAD ONLY AGREED THAT IT WOULD NOT BE NECESSARY TO HOLD A FURTHER HEARING IN ORDER FOR THE BOARD TO DESIGNATE A CHARITABLE ORGANIZATION.
3. IT WOULD APPEAR THAT THERE WAS A MISUNDERSTANDING AT THE HEARING OF THE APPLICATION AS TO THE POSITION OF THE RESPONDENT UNION WITH RESPECT TO THE DESIGNATION OF A CHARITABLE ORGANIZATION. NOTWITHSTANDING THIS MISUNDERSTANDING, THE BOARD HEREBY DESIGNATES THE CANADIAN RED CROSS SOCIETY AS THE CHARITABLE ORGANIZATION TO WHICH

THE SAID DUES OR OTHER ASSESSMENTS ARE TO BE PAID BY THE APPLICANT OR REMITTED BY THE RESPONDENT EMPLOYER.

1404-71-JD: ABE DICK MASONRY LIMITED (COMPLAINANT) V. 1) TRICON CONSTRUCTION CORPORATION; 2) LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 837; 3) UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 18 (RESPONDENTS).

BEFORE: O.B. SHIME, VICE-CHAIRMAN, AND BOARD MEMBERS J.D. BELL AND P.J. O'KEEFFE.

APPEARANCES AT THE HEARING: R.D. PERKINS FOR THE COMPLAINANT; NO ONE APPEARING FOR TRICON CONSTRUCTION CORPORATION; RAYMOND KOSKIE AND MICHAEL J. REILLY FOR LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 837; STANLEY SIMPSON AND C. GUAGLIANO FOR UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 18.

DECISION OF THE BOARD: JANUARY 20, 1972.

1. THIS IS A COMPLAINT UNDER SECTION 81 OF THE LABOUR RELATIONS ACT CONCERNING AN ALLEGED JURISDICTIONAL DISPUTE. PRIOR TO THIS MATTER COMING ON FOR HEARING ON THE MERITS THE COMPLAINANT ALLEGED THAT A STRIKE WAS IMMINENT BY REASON OF THE ASSIGNMENT OF WORK AND REQUESTED AN INTERIM ORDER PURSUANT TO SECTION 81(8). THAT SECTION PROVIDES AS FOLLOWS:

81.-(8) WHERE A COMPLAINT IS MADE UNDER SUBSECTION 1 AND THE COMPLAINANT ALLEGES THAT A STRIKE IS IMMINENT OR IS TAKING PLACE BY REASON OF THE REQUIREMENT AS TO THE ASSIGNMENT OF WORK OR BY REASON OF THE ASSIGNMENT OF WORK, THE BOARD MAY, AFTER CONSULTING ANY EMPLOYER, EMPLOYERS' ORGANIZATION, TRADE UNION OR COUNCIL OF TRADE UNIONS THAT IN ITS OPINION IS CONCERNED, MAKE SUCH INTERIM ORDER WITH RESPECT TO THE ASSIGNMENT OF THE WORK AS IT IN ITS DISCRETION CONSIDERS PROPER.

2. ACCORDINGLY THE BOARD PLACED THE MATTER ON FOR HEARING IN ORDER TO CONSULT WITH THE VARIOUS PARTIES CONCERNED. AT THE CONSULTATION NO VIVA VOCE EVIDENCE WAS PRESENTED IN ACCORDANCE WITH THE BOARD'S USUAL PRACTICE BUT CERTAIN BACKGROUND FACTS WERE GENERALLY AGREED UPON. THE PARTIES MADE REPRESENTATIONS BASED ON THE COMPLAINANT'S ALLEGED STATEMENT OF FACTS AND THESE BACKGROUND FACTS THAT WERE AGREED UPON WERE AUGMENTED DURING THE CONSULTATION. OUR DECISION IN THIS MATTER IS BASED ON THE ALLEGATIONS AND REPRESENTATIONS, AND ANY FINDINGS WHICH WE NOW MAKE ARE NOT TO BE TAKEN AS DETERMINATIVE OF THE ISSUES AND ARE

OF COURSE SUBJECT TO A FINAL HEARING ON THE MERITS AND THE PRESENTATION AT THAT HEARING OF VIVA VOCE EVIDENCE.

3. SUBJECT TO THIS QUALIFICATION IT APPEARS THAT THE BACKGROUND LEADING TO THE COMPLAINT IS AS FOLLOWS: THE RESPONDENT TRICON CONSTRUCTION CORPORATION (HEREINAFTER REFERRED TO AS TRICON) IS A GENERAL CONTRACTOR CARRYING ON OPERATIONS IN HAMILTON. TRICON SIGNED A COLLECTIVE AGREEMENT WITH THE RESPONDENT UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 18 (HEREINAFTER REFERRED TO AS CARPENTERS) WHEREIN TRICON AGREED NOT TO SUBLET THE WORK IN QUESTION TO CONTRACTORS OR SUBCONTRACTORS WHO DO NOT HAVE A CONTRACTUAL RELATIONSHIP WITH THE CARPENTERS. IT APPEARS THAT CONTRARY TO ITS AGREEMENT WITH THE CARPENTERS THAT TRICON ENTERED INTO A CONTRACT WITH THE COMPLAINANT SUBCONTRACTOR ABE DICK MASONRY LIMITED (HEREINAFTER REFERRED TO AS ABE DICK) TO PERFORM THE WORK IN ISSUE. ABE DICK DOES NOT HAVE A COLLECTIVE AGREEMENT WITH THE CARPENTERS BUT DOES HAVE A COLLECTIVE AGREEMENT WITH THE RESPONDENT, LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 837 (HEREINAFTER REFERRED TO AS LABOURERS).

4. LURKING IN THE BACKGROUND THERE IS UNDOUBTEDLY A JURISDICTIONAL DISPUTE BETWEEN THE CARPENTERS AND LABOURERS. HOWEVER, THE CARPENTERS ARE PROCEEDING TO ARBITRATION UNDER THEIR COLLECTIVE AGREEMENT WITH TRICON AND ARE NOT THREATENING A WORK STOPPAGE. THE CARPENTERS ADVISED THE BOARD THAT IN THESE PROCEEDINGS THEY ARE NOT SEEKING AN ASSIGNMENT OF WORK FROM ABE DICK AND WOULD NOT EXPECT SUCH AN ASSIGNMENT. THEY ARE CONTENT TO PURSUE THEIR LAWFUL REMEDY UNDER THE COLLECTIVE AGREEMENT.

5. THE PURSUIT OF THAT REMEDY HAS NO DOUBT CAUSED CONCERN TO TRICON WHO HAS ENTERED INTO WHAT APPEARS TO BE TWO INCONSISTANT AGREEMENTS. ON THE ONE HAND THEY ARE FACED WITH A POSSIBLE CLAIM IN AN ARBITRATION PROCEEDING BY THE CARPENTERS, BUT ON THE OTHER HAND IF THEY COMPLY WITH THE COLLECTIVE AGREEMENT THEY MAY SUBJECT THEMSELVES TO AN ALTERNATE CLAIM BY ABE DICK. TRICON'S DISCOMFORT HAS CAUSED THEM IN TURN TO EXERT PRESSURE ON ABE DICK TO ASSIGN THE WORK IN QUESTION TO THE CARPENTERS. ON DECEMBER 9, 1971, TRICON ADVISED ABE DICK THAT IT WOULD BE HELD RESPONSIBLE FOR ALL "COSTS INCURRED, LOSSES SUSTAINED AS WELL AS CONSEQUENTIAL DAMAGES CAUSED TO TRICON" ARISING OUT OF THE ASSIGNMENT OF THE DISPUTED WORK TO LABOURERS.

6. THE PRESSURE BEING APPLIED TO ABE DICK IS OF CONCERN TO THE LABOURERS WHO STAND TO LOSE THE BENEFITS THAT MIGHT ENSUE TO THEIR MEMBERS BY PERFORMING THE WORK IN QUESTION.

7. AS A RESULT OF THE VARIOUS PRESSURES ABE DICK HAS MADE AN ASSIGNMENT OF THE WORK TO THE CARPENTERS WHICH HAS NOT BEEN COMMUNICATED TO THE CARPENTERS AND AT THE CONSULTATION THEY REPRESENTED THAT THEY WERE

NOT PREPARED TO ACCEPT SUCH AN ASSIGNMENT FROM ABE DICK. ON BEING INFORMED OF THE ASSIGNMENT TO THE CARPENTERS, THE BUSINESS REPRESENTATIVE OF THE LABOURERS, IS ALLEGED TO HAVE INFORMED THE COMPLAINANT "THAT WHILE HE WOULD DO WHATEVER POSSIBLE TO KEEP HIS MEMBERS FROM STRIKING THEY WERE "FED-UP" AND HE WAS CERTAIN THAT THEY WOULD STRIKE IF THE APPLICANT ATTEMPTED TO HIRE CARPENTERS TO DO THE DISPUTED WORK."

8. IN OUR VIEW AN INTERIM ORDER MADE UNDER SECTION 81(8) OF THE ACT IS AN EXTRAORDINARY REMEDY. THE EFFECT OF SUCH AN ORDER IS OFTEN TO GIVE THE WORK TO ONE UNION TO THE DETRIMENT OF ANOTHER FOR THE LIFE OF THE PROJECT WITH THE REAL DISPUTE ULTIMATELY BEING DECIDED WHEN THE PROJECT HAS BEEN COMPLETED. THE POSSIBLE EFFECT OF SUCH AN INTERIM DECISION IS THAT ONE GROUP MAY SUFFER AN UNWARRANTED LOSS OF THE WORK IN QUESTION, AND WHILE GENERALLY AN ATTEMPTS HAS BEEN MADE TO MAINTAIN A STATUS QUO WE ARE OF THE VIEW THAT SOME CAUTION SHOULD BE EXERCISED IN UTILIZING OUR DISCRETION.

9. BASED ON THE REPRESENTATIONS AND PARTICULARLY THE FAILURE TO NOTIFY THE CARPENTERS AS TO THE WORK ASSIGNMENT SUGGESTS THAT THE LABOURERS AND ABE DICK ATTEMPTED TO CREATE A SITUATION SO AS TO BRING ABOUT AN ALLEGATION OF AN IMMINENT STRIKE THEREBY CONFERRING JURISDICTION ON THE BOARD UNDER SECTION 81(8) TO MAKE AN INTERIM ORDER.

10. AT THE HEARING ALSO THERE WERE TWO FURTHER ISSUES THAT WERE RAISED WHICH BEAR SOME COMMENT. FIRST, THE CARPENTERS CHALLENGED THE JURISDICTION OF THE BOARD TO ENTERTAIN THIS MATTER ON THE BASIS THAT THE FACTS OF THIS CASE DID NOT BRING THE MATTER WITHIN SECTION 81(1) OF THE LABOUR RELATIONS ACT, AND SINCE SECTION 81(8) IS CONTINGENT ON SECTION 81(1), THERE IS NO JURISDICTION ON THE BOARD. SECTION 81(1) PERMITS THE BOARD TO "INQUIRE INTO A COMPLAINT THAT A TRADE UNION OR COUNCIL OF TRADE UNIONS, OR AN OFFICER, OFFICIAL OR AGENT OF A TRADE UNION OR COUNCIL OF TRADE UNIONS, WAS OR IS REQUIRING AN EMPLOYER...TO ASSIGN PARTICULAR WORK TO PERSONS IN A PARTICULAR TRADE UNION OR IN A PARTICULAR TRADE, CRAFT OR CLASS RATHER THAN TO PERSONS IN ANOTHER TRADE UNION OR IN ANOTHER TRADE, CRAFT OR CLASS..." BOTH ABE DICK AND LABOURERS CONTEND THAT TRICON WAS AT ALL MATERIAL TIMES AN AGENT FOR THE CARPENTERS AND RELY ON THE DECISION OF FRASER, J. IN REGINA V. ONTARIO LABOUR RELATIONS BOARD EX PARTE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL UNION 736 (1969) CLLC 632 AT 635 WHICH WAS SUBSEQUENTLY FOLLOWED BY THE DECISION OF THIS BOARD IN THE SAME MATTER. BEER PRECAST CONCRETE LIMITED V. LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 AND THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL UNION NUMBER 736 (1969) JANUARY OLRB MTHLY. REP. 1108. IN OUR VIEW THE REPRESENTATIONS AT THIS STAGE INDICATE THAT TRICON AND THE CARPENTERS HAD THE SAME INTEREST AND THAT TRICON IN THE PURSUIT OF ITS INTEREST MAY ULTIMATELY BENEFIT THE CARPENTERS. THE REPRESENTATIONS, HOWEVER, FALL SHORT OF THE EVIDENCE

ADDUCED IN THE BEER PRECAST CONCRETE LIMITED SITUATION AND DO NOT ELEVATE TRICON TO THE STATUS OF AN AGENT AS DETERMINED BY THAT CASE. AN AGENCY RELATIONSHIP DOES NOT ARISE MERELY BECAUSE TWO PARTIES ARE IN THE SAME INTEREST AND ONE IS PURSUING ITS LAWFUL REMEDY AGAINST THE OTHER.

11. THE SECOND ISSUE RAISED BY THE CARPENTERS IS THAT AN INTERIM ORDER IN THIS CASE WOULD NOT MERELY MAINTAIN THE STATUS QUO BUT WOULD REACH OUT AND AFFECT THE COLLECTIVE AGREEMENT BETWEEN THE CARPENTERS AND TRICON PURSUANT TO SECTION 81(17) OF THE ACT. THAT SECTION INDICATES THAT AN INTERIM ORDER MADE BY THIS BOARD PREVAILS AND PERSONS COMPLYING "SHALL BE DEEMED NOT TO HAVE VIOLATED ANY PROVISION OF... ANY COLLECTIVE AGREEMENT." ACCORDINGLY, IF WE WERE TO MAKE AN INTERIM ORDER WE MIGHT NOT BE MAINTAINING THE STATUS QUO BUT WE MIGHT AFFECT THE RIGHTS OF THE CARPENTERS IN ITS COLLECTIVE AGREEMENT. SINCE THE CARPENTERS ARE NOT CLAIMING THE WORK FROM ABE DICK A DETERMINATION IN FAVOUR OF THE LABOURERS WOULD BENEFIT THE LABOURERS WHOSE MEMBERS MAY BE PURSUING THE WORK BY ALLEGED UNLAWFUL MEANS AT THE POSSIBLE EXPENSE OF THE RIGHTS OF THE CARPENTERS WHO ARE PURSUING THEIR REMEDY THROUGH THE ARBITRATION PROCESS AND IN A LAWFUL MANNER. WHILE WE MAKE NO FINAL DETERMINATION IN THIS ISSUE IT IS OF SOME CONSIDERATION IN EXERCISING OUR DISCRETION.

12. BASED ON THE REPRESENTATIONS AND FOR THE FOREGOING REASONS WE ARE NOT SATISFIED THAT THE CIRCUMSTANCES PRESENTLY BEFORE US WARRANT OUR INTERFERENCE BY WAY OF AN INTERIM ORDER AND ACCORDINGLY THE REQUEST FOR AN INTERIM ORDER IS DENIED.

534-71-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) v. A. COPE & SONS LIMITED (RESPONDENT) v. UNITED GLASS & CERAMIC WORKERS OF NORTH AMERICA (AFL-CIO-CLC) AND ITS LOCAL 224 (INTERVENER #1) v. LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 837 (INTERVENER #2) v. TEAMSTERS LOCAL 879 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (INTERVENER #3) v. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: R. A. FURNESS, VICE-CHAIRMAN AND BOARD MEMBERS E. BOYER AND F. W. MURRAY.

APPEARANCES AT THE HEARING: A. M. MINSKY AND J. REDSHAW FOR THE APPLICANT; ROBERT A. MACDERMID FOR THE RESPONDENT; O. H. FERGUSON FOR INTERVENER #1; NO ONE APPEARING FOR INTERVENERS #2 AND #3; R. B. MCPHERSON, STUART MOSS AND WILLIAM COWELL FOR THE OBJECTORS.

DECISION OF THE BOARD: JANUARY 20, 1972.

1. THIS IS AN APPLICATION FOR CERTIFICATION.

2. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(N) [FORMERLY SECTION 1(1)(J)] OF THE LABOUR RELATIONS ACT.

3. THE BOARD APPOINTED AN EXAMINER IN THIS MATTER TO INQUIRE INTO CERTAIN MATTERS WHICH WERE IN CONTENTION BETWEEN THE PARTIES. AT THE MEETING CONDUCTED BY THE EXAMINER, THE PARTIES RESOLVED THE DIFFERENCES IN DISPUTE BETWEEN THEM AND REDUCED THEIR AGREEMENT TO WRITING. A COPY OF THIS WRITTEN AGREEMENT, WHICH HAS BEEN SIGNED BY THE PARTIES AND IS ON FILE WITH THE BOARD, FOLLOWS:

[T]HE PARTIES AGREE THAT THE COMPOSITION OF THE BARGAINING UNITS SUGGESTED BY THE RESPONDENT BE APPROPRIATE. THE PARTIES FURTHER AGREE THAT THE BARGAINING UNITS READ AS FOLLOWS:

- 1) ALL EMPLOYEES OF THE RESPONDENT AT ITS QUARRY DIVISION IN THE TOWNSHIP OF SALTFLEET IN THE COUNTY OF WENTWORTH SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR (24) HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD,

NAMELY:

BECKWITH, LEANDER
 CHANDLER, MICHAEL
 COWELL, WILLIAM
 DUVALL, DAVID
 GELENSCER, JOSEPH
 HENDERSON, GORDON
 HOFER, JOHANN
 LAIDMAN, RUSSELL
 LAMBIE, SR., WILLIAM
 LAMBIE, JR., WILLIAM
 LUISETTO, ALBERTO
 MEREDITH, FRANK
 MOSS, STUART
 MCPHERSON, ROGER
 RAYNER, FREDERICK
 RUTHERFORD, HAROLD
 SPINNEY, GERALD
 STARR, HENRY
 ST. AUBIN, EDMUND
 TRAVIS, CLYDE

- 2) ALL EMPLOYEES OF THE RESPONDENT AT ITS DEPEW STREET DIVISION IN THE CITY OF HAMILTON IN THE COUNTY OF WENTWORTH SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR (24) HOURS PER WEEK, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, AND THOSE PERSONS COVERED UNDER A COLLECTIVE AGREEMENT WITH THE TEAMSTERS LOCAL UNION 879,

NAMELY:

COUTURE, ANDRE
 FICK, JOHN
 GORIUP, OTTO
 GRESKO, STEVE
 KAPTEYN, LAMBERTUS
 KARABAN, BOZO
 LASLO, STEVEN
 LININGTON, DAVID
 MERK, ALOIS
 MCINTYRE, LEWIS
 NOTT, GARY
 RASZEWSKI, ANTHONY
 RITCHIE, DAVID
 ROWBOTTOM, ALEXANDER
 VUKUSIC, MARIJAN
 WOODS, ROY
 ZYCH, MICHAEL

- 3) ALL EMPLOYEES OF THE RESPONDENT AT ITS PIPE DIVISION IN THE TOWNSHIP OF SALT FLEET IN THE COUNTY OF WENTWORTH SAVE AND EXCEPT THOSE PERSONS COVERED UNDER A COLLECTIVE AGREEMENT WITH THE UNITED GLASS AND CERAMIC WORKERS OF NORTH AMERICA, LOCAL 224, FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR (24) HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD,

NAMELY:

GERYK, NICKOLAS
 VANDYK, CHRISTIAN

THE PARTIES FURTHER AGREE THAT IT IS NOT NECESSARY TO ISSUE A FORMAL REPORT IN THIS MATTER.

4. THE RESPONDENT FILED ALLEGATIONS OF IMPROPER OR IRREGULAR CONDUCT IN CONNECTION WITH THE MANNER IN WHICH THE APPLICANT ALLEGEDLY OBTAINED ITS EVIDENCE OF MEMBERSHIP WITH RESPECT TO THE EMPLOYEES AFFECTED BY THIS APPLICATION. HOWEVER, AT A HEARING BEFORE THE BOARD WITH RESPECT TO THESE ALLEGATIONS, THE RESPONDENT WITHDREW THESE ALLEGATIONS.

5. THE APPLICANT FILED ALLEGATIONS OF IMPROPER OR IRREGULAR CONDUCT AGAINST THE RESPONDENT WITH RESPECT TO THE STATEMENT OF DESIRE FILED IN THIS MATTER. IT WAS THE CONTENTION OF THE APPLICANT THAT THE BOARD OUGHT NOT TO ACCEPT THE STATEMENT OF DESIRE BECAUSE IT DID NOT REFLECT THE TRUE AND VOLUNTARY WISHES OF THE EMPLOYEES WHO SIGNED IT.

6. THE STATEMENT OF DESIRE FILED IN THIS MATTER RELATED SOLELY TO THE AGREED BARGAINING UNIT AT THE RESPONDENT'S QUARRY DIVISION IN THE TOWNSHIP OF SALTFLEET IN THE COUNTY OF WENTWORTH.

7. THE BOARD FURTHER FINDS, HAVING REGARD TO THE AGREEMENT OF THE PARTIES, THAT ALL EMPLOYEES OF THE RESPONDENT AT ITS DEPEW STREET DIVISION IN THE CITY OF HAMILTON IN THE COUNTY OF WENTWORTH SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, AND THOSE PERSONS COVERED UNDER A COLLECTIVE AGREEMENT WITH THE TEAMSTERS LOCAL UNION 879, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

8. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN SIXTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT DEFINED IN PARAGRAPH SEVEN, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON JUNE 17, 1971, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 92(2)(J) [FORMERLY SECTION 77(2)(J)] OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

9. A CERTIFICATE WILL ISSUE TO THE APPLICANT WITH RESPECT TO THE BARGAINING UNIT DEFINED IN PARAGRAPH SEVEN.

10. THE BOARD FURTHER FINDS, HAVING REGARD TO THE AGREEMENT OF THE PARTIES, THAT ALL EMPLOYEES OF THE RESPONDENT AT ITS PIPE DIVISION IN THE TOWNSHIP OF SALTFLEET IN THE COUNTY OF WENTWORTH SAVE AND EXCEPT THOSE PERSONS COVERED UNDER A COLLECTIVE AGREEMENT WITH THE UNITED GLASS AND CERAMIC WORKERS OF NORTH AMERICA, LOCAL 224, FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

11. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT NOT LESS THAN THIRTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT DEFINED IN PARAGRAPH TEN, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON JUNE 17, 1971, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 92(2)(J) [FORMERLY SECTION 77(2)(J)] OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

12. A REPRESENTATION VOTE WILL BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT DEFINED IN PARAGRAPH TEN. ALL EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT DEFINED IN PARAGRAPH TEN ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

13. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BE REPRESENTED BY THE APPLICANT IN THEIR EMPLOYMENT RELATIONS WITH THE RESPONDENT.

14. THIS MATTER IS REFERRED TO THE REGISTRAR.

15. HAVING REGARD TO THE AGREEMENT OF THE PARTIES, THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT ITS QUARRY DIVISION IN THE TOWNSHIP OF SALTFLEET IN THE COUNTY OF WENTWORTH SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

16. THE APPLICANT FILED EVIDENCE OF MEMBERSHIP WITH RESPECT TO EIGHTEEN OF THE AGREED LIST OF TWENTY PERSONS IN THE BARGAINING UNIT DEFINED IN PARAGRAPH FIFTEEN. HOWEVER, THE STATEMENT OF DESIRE FILED IN OPPOSITION TO THIS APPLICATION CONTAINED THE NAMES OF ELEVEN OF THE PERSONS ON THE AGREED LIST OF TWENTY PERSONS REFERRED TO ABOVE. TEN OF THE PERSONS ON WHOSE BEHALF THE APPLICANT HAD FILED EVIDENCE OF MEMBERSHIP HAD ALSO SIGNED THE STATEMENT OF DESIRE FILED IN OPPOSITION TO THIS APPLICATION. THE UNCONTESTED EVIDENCE OF MEMBERSHIP FILED BY THE APPLICANT WAS ACCORDINGLY REDUCED TO LESS THAN THE NUMBER REQUIRED FOR OUTRIGHT CERTIFICATION. IT WAS, THEREFORE, NECESSARY FOR THE BOARD TO INQUIRE INTO THE ORIGINATION, PREPARATION AND CIRCULATION OF THE STATEMENT OF DESIRE FILED IN OPPOSITION TO THIS APPLICATION AND ALSO INTO THE ALLEGATIONS OF IMPROPER OR IRREGULAR CONDUCT FILED BY THE APPLICANT AGAINST THE RESPONDENT.

17. WILLIAM COWELL, STUART MOSS AND ROGER MCPHERSON WERE CALLED AS WITNESSES BY THE OBJECTORS, EDMUND ST. AUBIN AND JOHN HOFER WERE CALLED AS WITNESSES BY THE APPLICANT AND GEORGE ERSKINE WAS CALLED AS A WITNESS BY THE RESPONDENT.

18. WITH RESPECT TO THE STATEMENT OF DESIRE FILED IN THIS MATTER, THE BOARD FINDS THAT IT REPRESENTS THE TRUE WISHES OF THE EMPLOYEES WHO SIGNED IT AND THAT THERE IS NO EVIDENCE TO INDICATE THAT THE RESPONDENT PLAYED ANY PART IN THE ORIGINATION, PREPARATION OR CIRCULATION OF THIS DOCUMENT. THE APPLICANT RELIED HEAVILY UPON THE FACT THAT THERE WAS A DISCREPANCY IN EVIDENCE REGARDING THE DATES WHEN THE STATEMENT OF DESIRE FILED IN THIS MATTER WAS CIRCULATED AMONG THE EMPLOYEES. WHILE IT IS TRUE THAT MOSS DIFFERED FROM OTHER WITNESSES IN HIS EVIDENCE REGARDING THE DATES WHEN THE STATEMENT OF DESIRE WAS SIGNED BY THE EMPLOYEES, THE BOARD IS OF THE OPINION THAT MOSS WAS MISTAKEN ON THIS POINT AND THAT THIS MISTAKE IS NOT SURPRISING IN VIEW OF THE FACT THAT MORE THAN SIX MONTHS HAD ELAPSED BETWEEN THE TIME OF THE SIGNING OF THE STATEMENT OF DESIRE AND THE DATE WHEN MOSS GAVE HIS EVIDENCE BEFORE THE BOARD.

19. THE APPLICANT ATTEMPTED TO ESTABLISH THAT AT THE TIME THE STATEMENT OF DESIRE WAS SIGNED BY THE EMPLOYEES THERE WAS NO HEADING ON THIS DOCUMENT INDICATING THE PURPOSE FOR WHICH THESE SIGNATURES WERE TO BE USED. THE EVIDENCE OF ST. AUBIN AND HOFER IN THIS REGARD DOES NOT ESTABLISH THIS CONTENTION OF THE APPLICANT. ON THE CROSS-EXAMINATION, ST. AUBIN CONCEDED THAT IT WAS POSSIBLE THAT THERE WAS A HEADING TO THE STATEMENT OF DESIRE AND THAT HE DID NOT SEE IT AND HOFER, WHILE STATING THAT HE DID NOT SEE ANY WRITING ON THE STATEMENT OF DESIRE, ADMITTED THAT HE COULD NOT READ.

20. THE APPLICANT ALSO SOUGHT TO ESTABLISH THAT THE RESPONDENT HAD, IN SOME WAY, ASSISTED THE OBJECTORS IN THEIR OPPOSITION TO THIS APPLICATION. THE APPLICANT INTRODUCED EVIDENCE WHICH ESTABLISHED THAT THE EMPLOYEES HELD A MEETING ON THE COMPANY'S PREMISES AND THAT THERE WAS CONSIDERABLE DISAGREEMENT AS TO THE TIME OF DAY WHEN THIS MEETING OCCURRED. HOWEVER, THERE WAS GENERAL AGREEMENT FROM THE WITNESSES WHO TESTIFIED ON THIS POINT THAT MEETING HAD LASTED ABOUT FORTY-FIVE MINUTES AND THAT IT OCCURRED AT APPROXIMATELY THE SAME TIME WHEN THE EMPLOYEES HAD THEIR LUNCH BREAK. THE APPLICANT ALSO EMPHASIZED THAT SOME OF THE RESPONDENT'S TRUCKS WERE WAITING TO BE LOADED AND ARGUED THAT THE FACT THAT TRUCKS WERE ALLOWED TO REMAIN IDLE WHILE THE MEETING OF THE EMPLOYEES WAS TAKING PLACE WAS EVIDENCE OF TACIT MANAGEMENT SUPPORT FOR THE MEETING OF THE EMPLOYEES. THE EVIDENCE BEFORE THE BOARD, HOWEVER, ESTABLISHED THAT IT WAS BY NO MEANS UNUSUAL FOR TRUCKS TO REMAIN IDLE DURING THE MIDDLE PART OF THE DAY AND THAT SUCH TRUCKS MIGHT WELL BE IDLE, NOT AS A RESULT OF WAITING FOR A LOAD OF THE RESPONDENT'S MATERIAL, BUT RATHER AS A RESULT OF A WAITING ASSIGNMENT TO OTHER WORK OF THE RESPONDENT OR DUE TO MECHANICAL DEFECTS.

21. WHILE COWELL AND MCPHERSON SPOKE TO ERSKINE, THE RESPONDENT'S SUPERINTENDENT AT THE QUARRY, THERE WAS NO EVIDENCE BEFORE THE BOARD THAT EITHER THE RESPONDENT OR ERSKINE ENCOURAGED OR PROMOTED THE STATEMENT OF DESIRE FILED IN THIS MATTER. RATHER, THE EVIDENCE BEFORE THE BOARD INDICATES THAT THE RESPONDENT HAD NOT ATTEMPTED TO INFLUENCE THE EMPLOYEES IN THEIR SELECTION OR REJECTION OF A BARGAINING AGENT.

22. THE APPLICANT SOUGHT TO ESTABLISH THAT ERSKINE MIGHT HAVE OBSERVED EMPLOYEES SIGNING THE STATEMENT OF DESIRE IN OPPOSITION TO THIS APPLICATION. HOWEVER, THE EVIDENCE BEFORE THE BOARD DOES NOT ESTABLISH THAT ERSKINE OBSERVED ANY OF THE RESPONDENT'S EMPLOYEES SIGNING THE STATEMENT OF DESIRE IN THIS MATTER AND, IN ADDITION, THERE WAS NO EVIDENCE BEFORE THE BOARD THAT ERSKINE WAS EVEN AWARE OF THE MEETING OF THE EMPLOYEES REFERRED TO EARLIER.

23. HAVING REGARD TO THE EVIDENCE BEFORE THE BOARD AND TO THE REPRESENTATIONS OF THE PARTIES, THE BOARD FINDS THAT THE STATEMENT OF DESIRE FILED IN THIS MATTER SUFFICIENTLY WEAKENS THE EVIDENCE OF MEMBERSHIP FILED BY THE APPLICANT SO AS TO CAUSE THE BOARD TO SEEK THE CONFIRMATORY EVIDENCE OF A REPRESENTATION VOTE.

24. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT NOT LESS THAN THIRTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT DEFINED IN PARAGRAPH FIFTEEN, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON JUNE 17, 1971, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 92(2)(J) [FORMERLY SECTION 77(2)(J)] OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

25. A REPRESENTATION VOTE WILL BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT DEFINED IN PARAGRAPH FIFTEEN. ALL EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT DEFINED IN PARAGRAPH FIFTEEN ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

26. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BE REPRESENTED BY THE APPLICANT IN THEIR EMPLOYMENT RELATIONS WITH THE RESPONDENT.

27. THIS MATTER IS ALSO REFERRED TO THE REGISTRAR.

1190-71-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 493 (APPLICANT) v. CON-DIGN LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: R.A. FURNESS, VICE CHAIRMAN AND BOARD MEMBERS E. BOYER AND F. W. MURRAY.

DECISION OF THE BOARD: JANUARY 21, 1972.

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4. THE BOARD FURTHER FINDS THAT THIS IS AN APPLICATION FOR CERTIFICATION WITHIN THE MEANING OF SECTION 108 OF THE LABOUR RELATIONS ACT.

5. NO STATEMENT OF OBJECTIONS AND DESIRE TO MAKE REPRESENTATIONS HAS BEEN FILED WITH THE BOARD WITHIN THE TIME FIXED UNDER SUBSECTION 3 OF SECTION 42 OF THE BOARD'S RULES OF PROCEDURE, FOLLOWING THE SERVICE OF THE REPORT OF THE EXAMINER DATED DECEMBER 30, 1971.

6. HAVING REGARD TO THE AGREEMENT OF THE PARTIES, THE BOARD FURTHER FINDS THAT ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE TOWNSHIP OF DYMOND AND THE TOWNSHIPS IMMEDIATELY ADJACENT THERETO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

7. HAVING REGARD TO THE EVIDENCE BEFORE THE BOARD AND TO THE AGREEMENT OF THE PARTIES CONTAINED IN THE REPORT OF THE EXAMINER, THE BOARD FURTHER FINDS THAT THERE WERE FOUR PERSONS, NAMELY:

ORVAL CAMERON

JOHN HARRIS

TIM KANE

NORMAND ST. GEORGE,

WHO ARE PROPERLY CLASSIFIED AS CONSTRUCTION LABOURERS AND WHO ARE APPROPRIATE FOR INCLUSION IN THE BARGAINING UNIT DEFINED IN PARAGRAPH SIX ON THE DATE OF THE MAKING OF THIS APPLICATION.

8. THREE OF THE NAMES APPEARING ON THE FOUR APPLICATIONS FOR MEMBERSHIP ACCOMPANIED BY RECEIPTS FILED BY THE APPLICANT CORRESPOND TO THREE OF THE NAMES APPEARING ON THE LIST OF EMPLOYEES REFERRED TO IN PARAGRAPH SEVEN.

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10. THE RESPONDENT HAS REQUESTED A HEARING OF THIS APPLICATION BY THE BOARD AND IN SUPPORT OF THIS REQUEST HAS STATED IN PARAGRAPH 14(3) OF ITS REPLY:

- "A) AS THE TYPE OF WORK IS SO UNUSUAL (SIC) IT IS IMPOSSIBLE TO DISTINGUISH BETWEEN CARPENTERS AND LABOURERS AND, THEREFORE, THE RESPONDENT IS UNCERTAIN AS TO THE NUMBER OF EMPLOYEES IN THE UNIT.
- B) A WITHDRAWAL OR DISMISSAL OF THE APPLICATION.
- C) THE RESPONDENT SUBMITS THAT DUE TO THE UNUSUALNESS (SIC) OF THE TYPE OF DISTINGUISH BETWEEN CARPENTERS AND LABOURERS AND THE WORK HAS NOW PROGRESSED TO THE POINT WHERE THE RESPONDENT HAS NO NEED TO EMPLOY LABOURERS."

11. IN APPLICATIONS FOR CERTIFICATION FILED UNDER THE CONSTRUCTION INDUSTRY PROVISIONS OF THE LABOUR RELATIONS ACT THE BOARD NEED NOT HOLD A HEARING. REFERENCE IS MADE TO SECTION 91(14) OF THE LABOUR RELATIONS ACT. IT IS THE PRACTICE OF THE BOARD TO HOLD A HEARING IN APPLICATIONS FOR CERTIFICATION FILED UNDER THE CONSTRUCTION INDUSTRY PROVISIONS OF THE LABOUR RELATIONS ACT ONLY WHERE A USEFUL PURPOSE WOULD BE SERVED.

12. THE BOARD HAS CONSIDERED THE REASONS ADVANCED BY THE RESPONDENT IN SUPPORT OF ITS REQUEST FOR A HEARING. WITH RESPECT TO THE FIRST POINT, THE BOARD NOTES THAT THE PARTIES HAVE RESOLVED THIS ITEM IN THE REPORT OF THE EXAMINER. THE SECOND POINT RELATES TO A POSSIBLE ACT BY THE APPLICANT AND TO FUNCTION ENTRUSTED TO THE BOARD BY THE LABOUR RELATIONS ACT. THE THIRD POINT RAISED BY THE RESPONDENT IS IN PART A REPETITION OF THE FIRST POINT AND THE ADDITIONAL REASON CONTAINED THEREIN NAMELY, THE FACT THAT LABOURERS ARE NO LONGER REQUIRED BY THE RESPONDENT ON THE JOB-SIDE WHICH FORMS THE BASIS OF THIS APPLICATION, HAS NOT BEEN HELD BY THE BOARD AS A GROUND FOR DENYING CERTIFICATION TO A TRADE UNION. THE BOARD IS SATISFIED THAT NO USEFUL PURPOSE WOULD BE SERVED IN CONDUCTING A HEARING IN THIS MATTER. ACCORDINGLY, THE REQUEST OF THE RESPONDENT IS DENIED.

13. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN SIXTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON NOVEMBER 15, 1971 THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 92(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

447-71-R: SERVICE EMPLOYEES UNION, LOCAL 204, AFFILIATED WITH THE S.E.I.U. A.F. of L., C.I.O., C.L.C. (APPLICANT) v. NATION-WIDE INTERIOR MAINTENANCE CO. LTD. (RESPONDENT).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND O. HODGES.

APPEARANCES AT THE HEARING: MARTIN LEVINSON AND R. DAVIDSON FOR THE APPLICANT, W. G. PHELPS FOR THE RESPONDENT.

DECISION OF THE BOARD: JANUARY 25, 1972.

1. THE HISTORY OF THIS APPLICATION MAY BE BRIEFLY SUMMARIZED AS FOLLOWS. THE APPLICANT APPLIED TO BE CERTIFIED FOR CERTAIN EMPLOYEES OF THE RESPONDENT ON MAY 18, 1971. AT THE HEARING IN THIS MATTER ON JUNE 3, 1971 THE PARTIES AGREED THAT THE RESPONDENT'S EMPLOYEES SHOULD PROPERLY BE DIVIDED INTO FIVE SEPARATE BARGAINING UNITS. THE PARTIES FURTHER AGREED THAT THE BOARD HAD JURISDICTION TO ENTERTAIN THIS APPLICATION WITH RESPECT TO TWO OF THE BARGAINING UNITS, HOWEVER, THE RESPONDENT CHALLENGED THE BOARD'S CONSTITUTIONAL JURISDICTION TO ENTERTAIN THE APPLICATION WITH RESPECT TO THE OTHER THREE BARGAINING UNITS. THE PARTIES SUBSEQUENTLY AGREED THAT THE CONSTITUTIONAL ISSUE CONCERNED BE ADJOURNED SINE DIE TO AFFORD THE PARTIES AN OPPORTUNITY TO DEAL WITH THE MATTER.

2. BY ITS DECISION DATED JUNE 9, 1971, THE BOARD DISMISSED THE APPLICATION WITH RESPECT TO BARGAINING UNIT #1 WHICH COVERED THE EMPLOYEES OF THE RESPONDENT EMPLOYED AT THE CADILLAC BUILDING ON BLOOR STREET IN TORONTO AND THE BOARD CERTIFIED THE APPLICANT AS BARGAINING AGENT WITH RESPECT TO THE EMPLOYEES IN BARGAINING UNIT #2 AT THE STEPHEN LEACOCK SCHOOL IN AGINCOURT.

3. BY LETTER DATED JUNE 29, 1971, THE RESPONDENT ALLEGED THAT ONE OF ITS SUPERVISORS HAD ASSISTED THE APPLICANT TO ORGANIZE THE RESPONDENT'S EMPLOYEES. THIS MATTER WAS LISTED FOR HEARING TO CONSIDER THE RESPONDENT'S ALLEGATIONS AND THE OBJECTIONS OF THE APPLICANT WITH RESPECT THERETO. THE APPLICANT TOOK THE POSITION THAT THE RESPONDENT'S ALLEGATIONS WERE UNTIMELY.

4. AT THE HEARING IN THIS MATTER, FOR THE PURPOSE OF CONSIDERING THE TIMELINESS OF THE CHARGES MADE BY THE RESPONDENT, THE BOARD ASKED COUNSEL FOR THE RESPONDENT TO BRIEFLY SUMMARIZE THE FACTS UPON WHICH THE RESPONDENT RELIED.

5. IT WOULD APPEAR THAT FOLLOWING CERTIFICATION OF THE APPLICANT ON JUNE 9, 1971 A BARGAINING UNIT EMPLOYEE WAS PROMOTED TO THE POSITION OF AREA SUPERVISOR ON THAT DATE. WITHIN A WEEK OF JUNE 9TH

THE EMPLOYEE WHO HAD BEEN PROMOTED BROUGHT TO THE RESPONDENT'S ATTENTION THE FACTS UPON WHICH THE RESPONDENT RELIES IN SUPPORT OF ITS ALLEGATIONS OF IMPROPER CONDUCT. THERE WERE APPARENTLY A FEW DAYS' DELAY AFTER THE FACTS BECAME KNOWN TO THE RESPONDENT BEFORE COUNSEL FOR THE RESPONDENT COULD INTERVIEW THE PROMOTED EMPLOYEE. COUNSEL FOR THE RESPONDENT THEN ATTEMPTED TO OBTAIN INSTRUCTIONS FROM THE RESPONDENT'S HEAD OFFICE IN MONTREAL. HOWEVER, IT WAS NOT UNTIL TWO WEEKS LATER THAT INSTRUCTIONS WERE OBTAINED AND COUNSEL FOR THE RESPONDENT BY LETTER DATED JUNE 29TH MADE THE CHARGES WITH WHICH WE ARE HERE CONCERNED.

6. THE BOARD HAS CONSISTENTLY HELD THAT A PARTY WISHING TO ALLEGE IMPROPER CONDUCT MUST FILE ITS INTENTION TO DO SO PROMPTLY IN ACCORDANCE WITH SECTION 47 OF THE BOARD'S RULES OF PROCEDURE. IN THE INSTANT CASE, THE RESPONDENT PERMITTED MORE THAN TWO WEEKS TO ELAPSE BETWEEN THE TIME THAT THE FACTS CAME TO THE RESPONDENT'S ATTENTION AND THE TIME THAT ITS ALLEGATIONS WERE MADE. ALTHOUGH THE EVENTS COMPLAINED OF TOOK PLACE DURING THE SECOND WEEK OF MAY, THE RESPONDENT FAILED TO FILE NOTICE OF ITS INTENTION TO ALLEGE SUCH IMPROPER CONDUCT UNTIL THREE WEEKS HAD ELAPSED AFTER THE BOARD'S DECISION WHEREIN THE APPLICANT WAS CERTIFIED AS BARGAINING AGENT.

7. THE BOARD HAS REJECTED CHARGES WHICH WERE MADE AT A HEARING WHERE THE PARTY MAKING THE CHARGES HAD NOTICE OF THE EVENTS COMPLAINED OF TWO WEEKS PRIOR TO THE HEARING BUT FAILED TO FILE NOTICE OF ITS INTENTION TO MAKE SUCH ALLEGATIONS UNTIL A DAY OF THE HEARING. IN DENYING THE PARTY AN OPPORTUNITY TO CALL EVIDENCE IN SUPPORT OF ITS CHARGES, THE BOARD HELD IN SUCH CASES THAT THE PARTY HAD FAILED TO ACT PROMPTLY AS REQUIRED BY SECTION 47 OF THE BOARD'S RULES OF PROCEDURE. IN THE INSTANT CASE THE HEARING WHICH LED TO THE BOARD'S CERTIFICATE WAS HELD ON JUNE 3, 1971. ALMOST A MONTH EXPIRED BEFORE THE RESPONDENT'S CHARGES WERE MADE EVEN THOUGH THE FACTS COMPLAINED OF WERE IN EXISTENCE SINCE THE SECOND WEEK OF MAY.

8. THERE IS AN OBLIGATION ON ANY PARTY WISHING TO CALL EVIDENCE AT A HEARING IN SUPPORT OF CHARGES TO FILE NOTICE OF ITS INTENTION TO ALLEGE IMPROPER CONDUCT PROMPTLY. THE OBLIGATION TO ACT PROMPTLY AND EXPEDITIOUSLY IS EVEN GREATER AFTER A HEARING HAS BEEN HELD AND IN PARTICULAR WHERE A DECISION HAS BEEN ISSUED. WHERE MATTERS COME TO A PARTY'S ATTENTION UPON WHICH THE PARTY WISHES TO RELY IN SUPPORT OF ITS REQUEST FOR RECONSIDERATION OF A BOARD'S DECISION, THAT PARTY MUST ACT AS PROMPTLY AS POSSIBLE. THE FACTS OF THIS CASE CLEARLY INDICATE THAT THE RESPONDENT HAS FAILED IN THIS REGARD. APART FROM ANY CONSIDERATION AS TO WHETHER THE FACTS COMPLAINED OF SHOULD HAVE COME TO THE RESPONDENT'S ATTENTION EARLIER IF PROPER INQUIRIES HAD BEEN MADE OF THE RESPONDENT'S OWN OFFICIALS, THE FACT THAT THE RESPONDENT HAD KNOWLEDGE OF THE EVENTS COMPLAINED OF FOR A PERIOD OF TWO WEEKS DURING WHICH TIME THE RESPONDENT FAILED TO FILE NOTICE OF ITS INTEN-

TION TO ALLEGE IMPROPER CONDUCT AGAINST THE APPLICANT, CLEARLY ESTABLISHES THAT THE RESPONDENT FAILED TO ACT PROMPTLY AS REQUIRED BY SECTION 47 OF THE RULES.

9. THE BOARD THEREFORE IS NOT PREPARED TO PERMIT THE RESPONDENT TO ADDUCE EVIDENCE IN SUPPORT OF ITS ALLEGATIONS IN THESE CIRCUMSTANCES AND ITS CHARGES OF IMPROPER CONDUCT AS CONTAINED IN ITS LETTER OF JUNE 29, 1971 ARE THEREFORE DISMISSED.

10. THE BOARD DIRECTS THE REGISTRAR TO LIST THIS MATTER FOR CONTINUATION OF HEARING TO HEAR THE EVIDENCE AND REPRESENTATIONS OF THE PARTIES CONCERNING THE BOARD'S JURISDICTION TO ENTERTAIN THIS APPLICATION WITH RESPECT TO BARGAINING UNITS AT THE TORONTO INTERNATIONAL AIRPORT, MCKENZIE BUILDING AND DON MILLS POST OFFICE.

1237-71-R: BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION LOCAL 183, AFFILIATED SEIU, A.F.L., C.I.O., C.L.C. (APPLICANT) v. BEACON HILL LODGES OF CANADA LIMITED (RESPONDENT).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND O. HODGES.

DECISION OF THE BOARD: JANUARY 26, 1972.

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3. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT OTTAWA, SAVE AND EXCEPT PROFESSIONAL NURSING STAFF, PHYSIOTHERAPISTS, OCCUPATIONAL THERAPISTS, SUPERVISORS, FOREMEN, PERSONS ABOVE THE RANK OF SUPERVISOR AND FOREMAN, OFFICE STAFF, SECURITY GUARDS, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

4. FOR THE PURPOSES OF CLARITY AND FOR THE REASONS GIVEN BY THE BOARD IN ITS DECISION DATED JANUARY 12, 1972, THE BOARD FINDS THAT THE QUASI-PROFESSIONAL STAFF (R.N.A.'S AND QUALIFIED EQUIVALENTS) ARE EMPLOYEES OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT.

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7. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

. . .

130-70-M: JOHN RENSO NOBELS (APPLICANT) V. THE CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL UNION NO. 1065 (RESPONDENT TRADE UNION) V. JOSEPH BRANT MEMORIAL HOSPITAL OF THE BURLINGTON-NELSON HOSPITAL (RESPONDENT EMPLOYER).

BEFORE: G. W. REED, Q.C., CHAIRMAN, AND BOARD MEMBERS E. BOYER AND F. W. MURRAY.

DECISION OF THE BOARD: JANUARY 26, 1972.

1. IN AN EARLIER DECISION OF THE BOARD IN THIS MATTER, DATED JULY 26, 1971 IT WAS ORDERED, INTER ALIA, THAT THE APPLICANT WAS NOT REQUIRED TO PAY ANY DUES, FEES, OR ASSESSMENTS TO THE RESPONDENT TRADE UNION. THE DECISION THEN WENT ON TO PROVIDE, IN PART, AS FOLLOWS:

...IF NOBELS AND CUPE ARE UNABLE TO AGREE ON A CHARITABLE ORGANIZATION, THEN EACH SHOULD SO INFORM THE BOARD IN WRITING FORTHWITH AND SHOULD INCLUDE THEREIN ANY REPRESENTATIONS EACH MAY CARE TO MAKE AS TO THE CHARITABLE ORGANIZATION TO BE DESIGNATED BY THE BOARD.

2. THE APPLICANT AND THE RESPONDENT TRADE UNION HAVE NOW INFORMED THE BOARD THAT THEY HAVE BEEN UNABLE TO AGREE ON A MUTUALLY ACCEPTABLE CHARITABLE ORGANIZATION. SECTION 39(1) OF THE LABOUR RELATIONS ACT PROVIDES IN PART THAT WHERE THE EMPLOYEE AND TRADE UNION FAIL TO AGREE ON A CHARITABLE ORGANIZATION TO WHICH INITIATION FEES, DUES OR OTHER ASSESSMENTS ARE TO BE PAID BY THE EMPLOYEE OR REMITTED BY THE EMPLOYER, THEY ARE TO BE PAID BY THE EMPLOYEE OR REMITTED BY THE EMPLOYER "TO SUCH CHARITABLE ORGANIZATION REGISTERED AS A CHARITABLE ORGANIZATION IN CANADA UNDER PART I OF THE INCOME TAX ACT (CANADA) AS MAY BE DESIGNATED BY THE BOARD." ON CONSIDERING OUR RESPONSIBILITY UNDER THIS SECTION, WE HAVE COME TO THE CONCLUSION THAT, WHERE POSSIBLE, THE CHARITABLE ORGANIZATION SHOULD BE LOCATED IN THE AREA WHERE THE APPLICANT EMPLOYEE RESIDES OR WORKS. THE BOARD IS SATISFIED THAT THE CHARITABLE ORGANIZATION DESIGNATED BELOW INCLUDES BURLINGTON, WHERE THE APPLICANT BOTH RESIDES AND WORKS.

3. HAVING REGARD TO THE ABOVE CONSIDERATIONS, AND PURSUANT TO THE POWERS VESTED IN IT UNDER SECTION 39 OF THE LABOUR RELATIONS ACT, THE BOARD HEREBY DESIGNATES THE HAMILTON DISTRICT UNITED APPEAL, 220 MAIN STREET WEST, HAMILTON 10, ONTARIO, REGISTERED WITH THE DEPARTMENT OF NATIONAL REVENUE, TAXATION, AS NUMBER 0033555-03-14, AS THE CHARITABLE ORGANIZATION TO WHICH THE APPLICANT IS TO PAY OR THE EMPLOYER IS TO REMIT AMOUNTS EQUAL TO THE INITIATION FEES, DUES OR ASSESSMENTS WHICH THE APPLICANT IS NOT REQUIRED TO PAY TO THE RESPONDENT TRADE UNION AS A RESULT OF THE BOARD'S DECISION DATED JULY 26, 1971.

1208-71-R: OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION LOCAL 48 (APPLICANT) v. THE BOARD OF EDUCATION FOR THE CITY OF TORONTO (RESPONDENT) v. INTERNATIONAL BROTHERHOOD OF PAINTERS AND ALLIED TRADES, LOCAL UNION 557 (INTERVENER #1) v. TORONTO BUILDING AND CONSTRUCTION TRADES COUNCIL (INTERVENER #2).

BEFORE: R.A. FURNESS, VICE CHAIRMAN AND BOARD MEMBERS E. BOYER AND F.W. MURRAY.

APPEARANCES AT THE HEARING: LAURENCE C. ARNOLD AND EDWARD RUSSELL FOR THE APPLICANT; NO ONE APPEARING FOR THE RESPONDENT; DAVID CAIRNS, ALBERT ROSS AND ARMANDO COLAFRANCESCHI FOR INTERVENER #1; A.M. MINSKY AND ALEX MAIN FOR INTERVENER #2.

DECISION OF THE BOARD: JANUARY 26, 1972.

1. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(N) OF THE LABOUR RELATIONS ACT.

2. HAVING REGARD TO THE REPRESENTATION OF THE PARTIES, THE BOARD FINDS THAT THIS IS NOT AN APPLICATION FOR CERTIFICATION WITHIN THE MEANING OF SECTION 108 OF THE LABOUR RELATIONS ACT.

3. THE APPLICANT IS SEEKING CERTIFICATION ON BEHALF OF ALL PLASTERERS AND PLASTERERS' APPRENTICES EMPLOYED BY THE RESPONDENT IN, OR OUT OF, ITS MAINTENANCE AND CONSTRUCTION DEPARTMENT.

4. THE REPRESENTATIONS BEFORE THE BOARD INDICATE THAT THE TORONTO BUILDING AND CONSTRUCTION TRADES COUNCIL (HEREINAFTER REFERRED TO AS THE "COUNCIL") WAS AFFORDED VOLUNTARY RECOGNITION BY THE RESPONDENT IN DECEMBER, 1965 AND THAT AT THAT TIME THE APPLICANT WAS A MEMBER OF THE COUNCIL.

5. SUCCESSIVE COLLECTIVE AGREEMENTS WERE ENTERED INTO BETWEEN THE RESPONDENT AND THE COUNCIL ON BEHALF OF ITS MEMBER TRADE UNIONS (INCLUDING THE APPLICANT). THE RESPONDENT, THE COUNCIL AND THE APPLICANT WERE SIGNATORIES TO A COLLECTIVE AGREEMENT EFFECTIVE FROM JANUARY 1, 1967 UNTIL DECEMBER 31, 1967 WITH PROVISION FOR RENEWAL FOR FURTHER PERIODS OF ONE YEAR SUBJECT TO NOTICE.

6. IN ARTICLE 11 OF THIS COLLECTIVE AGREEMENT THE BARGAINING UNIT WAS DESCRIBED AS "ALL TRADESMEN OF THE MAINTENANCE AND CONSTRUCTION DEPARTMENT OF THE BOARD, EXCEPTING THOSE DESCRIBED HEREIN:

(B) PERSONS ABOVE THE RANK OF
WORKING FOREMEN.....
(WITH OTHER EXCEPTIONS NOT
HERE RELEVANT)."

7. IT WAS AGREED THAT PLASTERERS AND THEIR APPRENTICES WERE COVERED UNDER THIS COLLECTIVE AGREEMENT. IT APPEARS THAT AFTER 1967 SUCCESSIVE COLLECTIVE AGREEMENTS WERE ENTERED INTO BETWEEN THE RESPONDENT, THE COUNCIL AND ITS MEMBER TRADE UNION (INCLUDING THE APPLICANT). IT ALSO APPEARS THAT A RIFT WAS DEVELOPING BETWEEN THE APPLICANT AND THE COUNCIL WHICH CULMINATED IN THE EXPULSION OF THE APPLICANT FROM THE COUNCIL IN MARCH, 1970. PRIOR TO THE DATE OF EXPIRATION OF A COLLECTIVE AGREEMENT IN FORCE DURING 1969 BETWEEN THE RESPONDENT, THE COUNCIL AND ITS MEMBER TRADE UNIONS (INCLUDING THE APPLICANT), THE APPLICANT GAVE TIMELY NOTICE TO THE RESPONDENT OF ITS DESIRE TO NEGOTIATE A NEW COLLECTIVE AGREEMENT.

8. A NEW COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE COUNCIL WAS ENTERED INTO ON APRIL 19, 1971 AND WAS MADE EFFECTIVE FROM JANUARY 1, 1970 UNTIL DECEMBER 31, 1971. THE APPLICANT WAS NEITHER A MEMBER OF THE COUNCIL AT THE TIME THIS COLLECTIVE AGREEMENT WAS ENTERED INTO NOR WAS IT A SIGNATORY TO THIS COLLECTIVE AGREEMENT.

9. THIS APPLICATION FOR CERTIFICATION WAS FILED ON NOVEMBER 3, 1971 WHEN THE APPLICANT WAS NOT A PARTY TO A COLLECTIVE AGREEMENT WITH THE RESPONDENT. ARTICLE 1 1(D) OF THE LAST COLLECTIVE AGREEMENT TO WHICH THE APPLICANT WAS A SIGNATORY PROVIDED:

"THAT SHOULD A MEMBER UNION OF THE COUNCIL CEASE TO BE A MEMBER OF THE COUNCIL FOR ANY REASON, ALL THE RIGHTS AND PRIVILEGES OF SUCH UNION UNDER THIS AGREEMENT SHALL BE NULLIFIED AND THE BOARD SHALL NOT BE REQUIRED TO BARGAIN COLLECTIVELY WITH SUCH UNION UNLESS CERTIFICATION PROCEDURES REQUIRED BY LAW HAVE BEEN MADE."

10. SECTION 43(4) OF THE LABOUR RELATIONS ACT PROVIDES:

"A COLLECTIVE AGREEMENT BETWEEN A COUNCIL OF TRADE UNIONS, OTHER THAN A CERTIFIED COUNCIL OF TRADE UNIONS, AND AN EMPLOYER OR AN EMPLOYERS' ORGANIZATION IS, SUBJECT TO AND FOR THE PURPOSES OF THE ACT, BINDING UPON THE COUNCIL OF TRADE UNIONS AND EACH TRADE UNION THAT WAS A MEMBER OF OR AFFILIATED WITH THE COUNCIL OF TRADE UNIONS AT THE TIME THE AGREEMENT WAS ENTERED INTO AND ON WHOSE BEHALF THE COUNCIL OF TRADE UNIONS BARGAINED WITH THE EMPLOYER OR EMPLOYERS' ORGANIZATION AS IF IT WAS MADE

BETWEEN EACH OF SUCH TRADE UNIONS AND THE EMPLOYER OR EMPLOYERS' ORGANIZATION, AND UPON THE EMPLOYEES IN THE BARGAINING UNIT DEFINED IN THE AGREEMENT AND, IF ANY SUCH TRADE UNION CEASES TO BE A MEMBER OF OR AFFILIATED WITH THE COUNCIL OF TRADE UNIONS DURING THE TERM OF OPERATION OF THE AGREEMENT, IT SHALL, FOR THE REMAINDER OF THE TERM OF OPERATION OF THE AGREEMENT, BE DEEMED TO BE A PARTY TO A LIKE AGREEMENT WITH THE EMPLOYER OR EMPLOYERS' ORGANIZATION, AS THE CASE MAY BE.

IT IS CLEAR THAT THE APPLICANT CEASED TO BE A MEMBER OF OR AFFILIATED WITH THE COUNCIL IN MARCH 1970 AND WAS NOT BOUND BY THE MOST RECENT COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE COUNCIL WHICH WAS ENTERED INTO ON APRIL 19, 1971.

11. BY VIRTUE OF THE PROVISIONS REFERRED TO IN PARAGRAPH 9 HEREIN, THE RESPONDENT, THE COUNCIL AND THE MEMBERS OF THE COUNCIL (INCLUDING THE APPLICANT) HAVE ATTEMPTED TO PROVIDE FOR THE TERMINATION OF A COLLECTIVE AGREEMENT WITH RESPECT TO A MEMBER OF A COUNCIL OF TRADE UNIONS UPON ITS CEASING TO BE A MEMBER OF SUCH COUNCIL FOR ANY REASON. THIS, OF COURSE, IS AN ATTEMPT BY THE PARTIES WHO ARE SIGNATORIES TO A COLLECTIVE AGREEMENT TO TERMINATE A COLLECTIVE AGREEMENT WITH RESPECT TO A MEMBER TRADE UNION WHICH CEASED TO BE A MEMBER OF A COUNCIL OF TRADE UNIONS BEFORE THE COLLECTIVE AGREEMENT CEASES TO OPERATE. SUCH CONDUCT IS PROSCRIBED UNLESS JOINT APPLICATION IS MADE BY THE PARTIES TO THE COLLECTIVE AGREEMENT TO THE BOARD AND THE CONSENT OF THE BOARD IS GIVEN. REFERENCE IS MADE TO SECTION 44(3) OF THE LABOUR RELATIONS ACT. SEE ALSO THE NICHOLAS ZACOTA CASE OLRB MONTHLY REPORT JUNE, 1969, P.399 AND TO THE BELMONT PLASTERING COMPANY LIMITED CASE OLRB MONTHLY REPORTS MARCH, 1970, P.1459.

12. THE PARTIES HAVE, BY THE PROVISIONS OF ARTICLE I 1(D), PURPORTED TO TAKE THEMSELVES OUT OF THE PROVISIONS OF SECTIONS 44(3) AND 43(4) AND POSSIBLY SECTION 44(1) OF THE LABOUR RELATIONS ACT AND TO MAKE A LAW TO THEMSELVES OUTSIDE THE EVIDENT SCOPE AND INTENT OF THE LABOUR RELATIONS ACT. WE ARE OF THE OPINION THAT THE PARTIES ARE NOT COMPETENT TO ENACT PRIVATE LEGISLATION WHICH WOULD PERMIT CONDUCT WHICH THE LABOUR RELATIONS ACT CLEARLY PROSCRIBES.

13. IN OUR OPINION, ARTICLE I 1(D) PURPORTING AS IT DOES TO PERMIT THE PARTIES TO A COLLECTIVE AGREEMENT TO NULLIFY COLLECTIVE BARGAINING BETWEEN TWO PARTIES AND TO EXTINGUISH BARGAINING RIGHTS IS INVALID. ACCORDINGLY, THE BOARD FINDS THAT THE APPLICANT ALREADY HAS BARGAINING RIGHTS WITH RESPECT TO THE EMPLOYEES FOR WHOM IT IS SEEKING CERTIFICATION.

14. IN THE RESULT THIS PROCEEDING IS TERMINATED.

1023-71-U: DON GEBBIE & MICHAEL LONGMOORE (COMPLAINANTS) v. STEVEN HARRIS AND LOCAL 200, INTERNATIONAL UNION, UNITED AUTOMOBILE, AERO-SPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (RESPONDENTS).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS P. J. O'KEEFE AND J.E.C. ROBINSON, Q.C.

DECISION OF THE BOARD: JANUARY 27, 1972.

1. THE BOARD BY ITS DECISION DATED JANUARY 17, 1972 DENIED THE COMPLAINANTS' REQUEST FOR LEAVE TO WITHDRAW THEIR APPLICATION AND DISMISSED THIS APPLICATION. THE SOLICITOR FOR THE COMPLAINANTS, BY LETTER DATED JANUARY 25, 1972, HAS REQUESTED THE BOARD TO REVIEW ITS DECISION ON THE FOLLOWING GROUNDS:

1. THE COMPLAINANTS HAD REQUESTED THAT THE COMPLAINT No. 1023-71-U BE WITHDRAWN IN ORDER THAT A NEW COMPLAINT MIGHT BE FILED. A NEW COMPLAINT HAS BEEN FILED UNDER No. 1475-71-U. THE DECISION OF THE BOARD DISMISSING COMPLAINT No. 1023-71-U FACES THE COMPLAINANTS WITH THE PROSPECT OF A PLEA OF RES JUDICATA WHEN THE NEW COMPLAINT IS HEARD WHEN IN FACT THE MERITS OF THE ORIGINAL COMPLAINT 1023-71-U HAVE NOT BEEN DEALT WITH BY THE BOARD.

2. THE BOARD IS REQUESTED NOT TO DISMISS COMPLAINT No. 1023-71-U UNTIL COMPLAINT No. 1475-71-U IS PROCESSED AND HEARD.

2. THE BOARD'S DECISION DISMISSING THIS APPLICATION WAS BASED ON A PROCEDURAL PRACTICE TO DISMISS AN APPLICATION WHERE LEAVE IS REQUESTED TO WITHDRAW THE APPLICATION AFTER A HEARING HAS BEEN HELD. SUCH DISMISSAL IS NOT A DISMISSAL ON THE MERITS OF THE CASE. SINCE THERE HAS BEEN NO ADJUDICATION ON THE FACTS OF THIS COMPLAINT, THE DOCTRINE OF RES JUDICATA DOES NOT APPLY.

3. SINCE WE HAVE FOUND THAT THE DOCTRINE OF RES JUDICATA HAS NO APPLICATION IN ANY SUBSEQUENT PROCEEDING CONCERNING THIS MATTER, WE ARE OF THE VIEW THAT THE BOARD SHOULD NOT VARY OR REVOKE ITS DECISION OF JANUARY 17, 1972 AND THE COMPLAINANTS' REQUEST IS ACCORDINGLY DENIED.

587-71-U: RETAIL AND FOOD EMPLOYEES LOCAL UNION 175, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (COMPLAINANT) v. SUN PARLOUR GREENHOUSE GROWERS' CO-OPERATIVE LIMITED, ARMSTRONG PRODUCE COMPANY LIMITED, A.M.C. PRODUCE SHIPPERS INCORPORATED, MASTRONARDI PRODUCE LIMITED, GARDEN ACRE SALES, AN AGENCY OF ONTARIO GREENHOUSE PRODUCERS MARKETING BOARD (RESPONDENTS).

BEFORE: O.B. SHIME, VICE-CHAIRMAN, AND BOARD MEMBERS J.D. BELL AND A. MAIN.

APPEARANCES AT THE HEARING: J.A. RYDER FOR THE COMPLAINANT; JAMES N. BARTLET, Q.C. FOR SUN PARLOUR GREENHOUSE GROWERS' CO-OPERATIVE LIMITED; T.C. ODETTE FOR ARMSTRONG PRODUCE COMPANY LIMITED, A.M.C. PRODUCE SHIPPERS INCORPORATED AND MASTRONARDI LIMITED.

DECISION OF O.B. SHIME, VICE-CHAIRMAN, AND BOARD MEMBER A. MAIN: JANUARY 26, 1972.

1. THE RESPONDENT, SUN PARLOUR GREENHOUSE GROWERS' CO-OPERATIVE LIMITED (HEREINAFTER REFERRED TO AS SUN PARLOUR) IS A COMPANY DULY INCORPORATED UNDER THE LAWS OF THE PROVINCE OF ONTARIO. IT IS A CO-OPERATIVE COMPOSED OF APPROXIMATELY TWO HUNDRED GROWER MEMBERS; ELEVEN OF WHOM FORM THE BOARD OF DIRECTORS. SUN PARLOUR ENGAGES IN THE BUSINESS OF BUYING AND SELLING BOTH GREENHOUSE AND FIELD PRODUCTS. ARMSTRONG PRODUCE COMPANY LIMITED (HEREINAFTER REFERRED TO AS ARMSTRONG) AND MASTRONARDI PRODUCE LIMITED (HEREINAFTER REFERRED TO AS MASTRONARDI) ARE SIMILAR CORPORATIONS AND CARRY ON BUSINESS IN A LIKE MANNER TO SUN PARLOUR. SOMETIME IN 1971, ARMSTRONG, MASTRONARDI AND SUN PARLOUR, ENTERED INTO AN AGREEMENT WITH THE ENCOURAGEMENT OF THE LOCAL FARM MARKETING BOARD TO FORM A.M.C. PRODUCE SHIPPERS INCORPORATED (HEREINAFTER REFERRED TO AS A.M.C.), A COMPANY DULY INCORPORATED UNDER THE LAWS OF THE PROVINCE OF ONTARIO, AND A.M.C. RECEIVED ITS CHARTER ON OR ABOUT APRIL 22, 1971. ARMSTRONG, MASTRONARDI AND SUN PARLOUR ARE ALL SHAREHOLDERS IN A.M.C. AND THEIR SHARE REPRESENTATION IS DEPENDENT UPON THEIR SALES. A.M.C. HAS FOUR DIRECTORS - ONE REPRESENTING ARMSTRONG, ONE REPRESENTING MASTRONARDI AND TWO REPRESENTING SUN PARLOUR. IT WAS VERBALLY AGREED BETWEEN SUN PARLOUR AND A.M.C. THAT SINCE SUN PARLOUR HAD THE FACILITIES AND STAFF THAT A.M.C. WOULD OPERATE ITS OFFICE OUT OF THE SUN PARLOUR FACILITIES USING THE EXISTING SUN PARLOUR OFFICE EMPLOYEES.

2. THE AGGRIEVED EMPLOYEES HAD BEEN EMPLOYED IN THE SUN PARLOUR OFFICE - SOME FOR SEVERAL YEARS. THE UNION HAD BEEN CERTIFIED AS THE BARGAINING AGENT BY A CERTIFICATE OF THIS BOARD DATED MAY 25, 1971. PRIOR TO THE HEARING OF THE APPLICATION FOR CERTIFICATION A PETITION SIGNED BY CERTAIN EMPLOYEES OPPOSING THE UNION'S APPLICATION FOR CERTIFICATION WAS FILED WITH THIS BOARD. THE OFFICERS AND DIRECTORS OF

SUN PARLOUR WERE INFORMED OF THE FILING OF THE PETITION AND CONSIDERED THE MATTER TO BE A DEAD ISSUE. AS A RESULT NO ONE ATTENDED AT THE CERTIFICATION HEARING ON BEHALF OF SUN PARLOUR. ON MAY 26, 1971, AFTER IT WAS CERTIFIED, THE COMPLAINANT UNION SENT NOTICE TO BARGAIN TO SUN PARLOUR AND ON JUNE 9, 1971, SUN PARLOUR REPLIED AND ARRANGED FOR A MEETING. ON MONDAY, JUNE 14, 1971, ALL THE OFFICE EMPLOYEES OF SUN PARLOUR WERE DISMISSED.

3. AT THIS JUNCTURE IT IS IMPORTANT TO NOTE THAT NONE OF THE EMPLOYEES CONCERNED WAS TERMINATED BECAUSE OF INDIVIDUAL INCOMPETENCE BUT RATHER SUN PARLOUR CLAIMS THE EMPLOYEES WERE TERMINATED "BECAUSE OF A WITHDRAWAL FROM THE COMPANY BY A.M.C. OF ALL WORK DONE BY THESE EMPLOYEES".

4. ON JUNE 14, 1971, A.M.C. ASSUMED THE WORK PREVIOUSLY DONE BY SUN PARLOUR. IT CONTINUED TO OPERATE FROM THE SAME OFFICE PREMISES AS SUN PARLOUR. MR. WILLIAM PAULS, A CHARTERED ACCOUNTANT, RETAINED BY SUN PARLOUR AS A TEMPORARY OFFICE MANAGER CONTINUED AS THE OFFICE MANAGER OF A.M.C.; IN ADDITION, THREE FORMER SUN PARLOUR OFFICE EMPLOYEES WERE HIRED BY A.M.C. WHEN THE GRIEVORS APPLIED FOR EMPLOYMENT TO A.M.C. THEY WERE DENIED EMPLOYMENT AND THEY CLAIM THAT THEY WERE DEALT WITH BY THE RESPONDENTS CONTRARY TO SECTIONS 56, 58(A), 58(B) AND 61 (FORMERLY SECTIONS 48, 50(A), 50(B) AND 52) OF THE LABOUR RELATIONS ACT.

5. COUNSEL FOR THE COMPLAINANT RELIED UPON SECTION 1(4) OF THE LABOUR RELATIONS ACT IN SUPPORT OF ITS CLAIM AGAINST THE VARIOUS RESPONDENTS. THAT SECTION PROVIDES:

1.-(4) WHERE, IN THE OPINION OF THE BOARD, ASSOCIATED OR RELATED ACTIVITIES OR BUSINESSES ARE CARRIED ON BY OR THROUGH MORE THAN ONE CORPORATION, INDIVIDUAL, FIRM, SYNDICATE OR ASSOCIATION, OR ANY COMBINATION THEREOF, UNDER COMMON CONTROL OR DIRECTION, THE BOARD MAY TREAT THE CORPORATIONS, INDIVIDUALS, FIRMS, SYNDICATES OR ASSOCIATIONS OR ANY COMBINATION THEREOF AS CONSTITUTING ONE EMPLOYER FOR THE PURPOSES OF THIS ACT.

6. THE EVIDENCE DISCLOSED THAT ARMSTRONG, MASTRONARDI AND SUN PARLOUR WERE INDEPENDENT COMPANIES CARRYING ON INDEPENDENT BUSINESSES, SEPARATELY CONTROLLED AND DIRECTED. THE PRINCIPALS OF THOSE COMPANIES BECAME ASSOCIATED IN THE JOINT OPERATION OF A.M.C. BECAUSE THE PRINCIPALS CHOSE TO ASSOCIATE BY USING THE SEPARATE CORPORATE VEHICLE OF A.M.C. DOES NOT MEAN, CONVERSELY, THAT ALL THE COMPANIES WITH WHICH THE PRINCIPALS ARE ASSOCIATED FALL "UNDER COMMON CONTROL OR DIRECTION"

WITHIN THE MEANING OF SECTION 1(4) OF THE ACT. THE RESULT OF THE EVIDENCE IN OUR VIEW IS THAT THERE IS NO EVIDENCE CONSISTENT WITH ANY ALLEGATIONS WHICH WOULD ENTITLE THE CLAIMANT TO OBTAIN RELIEF AGAINST ARMSTRONG AND MASTRONARDI AND THE CLAIM AGAINST THEM IS DISMISSED. IN VIEW OF THE PARTICULAR ALLEGATIONS AGAINST A.M.C. IT IS NOT NECESSARY TO INVOKE SECTION 1(4) IN ARRIVING AT A DETERMINATION WITH RESPECT TO A.M.C. AND ACCORDINGLY IT IS NOT NECESSARY TO REACH A DECISION AS TO THE APPLICABILITY OF SECTION 1(4) TO THE RELATIONSHIP BETWEEN SUN PARLOUR AND A.M.C.

7. WE NOW PROPOSE TO DEAL WITH THE FACTS IN SOME GREATER DETAIL. IT APPEARS THAT SUN PARLOUR HAD OPERATED ITS OFFICE IN A SATISFACTORY MANNER UNTIL THE LATE FALL OR EARLY WINTER OF 1970 AND AT THAT TIME THINGS BEGAN TO DETERIORATE. THERE IS NO EVIDENCE AND INDEED NO CLAIM IS MADE THAT THE DETERIORATION RESULTED FROM THE WORK PERFORMANCE OF ANY INDIVIDUAL EMPLOYEE. THE EVIDENCE IS EQUALLY CONSISTENT WITH THE VIEW THAT THIS SITUATION RESULTED FROM THE LACK OF PROPER DIRECTION BY THE IMMEDIATE SUPERVISORS OF THE OFFICE EMPLOYEES. AS THE RESULT OF THE ARRANGEMENTS MADE BETWEEN SUN PARLOUR AND A.M.C. THE OFFICE STAFF OF SUN PARLOUR TOWARD THE END OF MARCH 1971 AND THE EARLY PART OF APRIL 1971, ASSUMED THE ADDITIONAL OFFICE WORK OF A.M.C., WORSENING AN ALREADY DETERIORATED SITUATION.

8. IT IS QUITE LIKELY THAT THIS SITUATION CAUSED THE EMPLOYEES TO SEEK MEMBERSHIP IN THE COMPLAINANT UNION. EARLY IN MAY 1971 THE COMPLAINANT UNION SOUGHT CERTIFICATION BASED ON ITS MEMBERSHIP AMONG THE OFFICE EMPLOYEES. ON MAY 10, 1971, A MEETING WAS HELD AT THE OFFICES OF SUN PARLOUR AND AT THAT MEETING A MR. FRANK DURANSKY TALKED TO THE EMPLOYEES ABOUT THE UNION. MR. DURANSKY HOLDS NO OFFICIAL POSITION WITH SUN PARLOUR ALTHOUGH HE IS A LARGE GROWER ASSOCIATED WITH SUN PARLOUR. IT IS CLEAR THAT THE TONE OF THE MEETING WAS NOT PRO-UNION. THE MEETING APPEARED TO HAVE HAD A CATHARTIC EFFECT ON ALL CONCERNED AND AT THE END OF THE MEETING A PETITION WAS SIGNED BY THE EMPLOYEES IN OPPOSITION TO THE UNION AND THE EMPLOYEES LATER RECEIVED SOME ASSURANCE THAT THEIR JOBS WERE NOT IN JEOPARDY. SUN PARLOUR CONSIDERED THAT THE MATTER OF A TRADE UNION WAS A DEAD ISSUE; NO DOUBT SUN PARLOUR WAS OF THE VIEW THAT THE FORWARDING OF THE PETITION IN OPPOSITION TO THE UNION TO THE ONTARIO LABOUR RELATIONS BOARD WAS SUFFICIENT TO CANCEL THE APPLICATION FOR CERTIFICATION. IN ANY EVENT NO ONE APPEARED FOR SUN PARLOUR OR THE EMPLOYEES AT THE CERTIFICATION HEARING AND A CERTIFICATE WAS ISSUED TO THE COMPLAINANT TRADE UNION FOR THE OFFICE EMPLOYEES OF SUN PARLOUR ON OR ABOUT MAY 25, 1971. NOTICE TO BARGAIN WAS THEN SENT TO THE COMPANY ON MAY 26, 1971, AND A REPLY WAS SENT FROM SUN PARLOUR TO THE TRADE UNION ON JUNE 9, 1971.

9. ON JUNE 7, 1971, MR. A. KEOUGH, THE OFFICE MANAGER OF SUN PARLOUR, WAS HOSPITALIZED. SUN PARLOUR OBTAINED THE SERVICES OF MR.

WILLIAM PAULS, AN EMPLOYEE OF DELOITTE, HASKINS & SELLS, CHARTERED ACCOUNTANTS, AS A TEMPORARY OFFICE MANAGER. THAT FIRM WAS THE ACCOUNTANT FOR SUN PARLOUR AND FOR A.M.C. AND HAD PREVIOUSLY BEEN CALLED UPON TO ADVISE SUN PARLOUR WITH RESPECT TO THE DIFFICULTIES IT WAS ENCOUNTERING IN ITS OFFICE PROCEDURES. MR. PAULS ARRIVED ON TUESDAY, JUNE 8, 1971, IN THE AFTERNOON, AND BY THURSDAY, JUNE 10TH HE REPORTED TO THE BOARD OF SUN PARLOUR THAT THINGS IN THE OFFICE WERE IN A "MESS".

10. ON THAT DATE MR. PAULS DESCRIBED TO THE SUN PARLOUR BOARD THE STATE OF AFFAIRS; NEITHER AN OPINION AS TO THE METHODS OF IMPROVEMENT NOR ANY RECOMMENDATIONS WERE ASKED OF HIM, NOR WAS HE ASKED TO INDICATE THE BLAME FOR THE BADLY DETERIORATED SITUATION. WE FIND IT CURIOUS THAT MR. PAULS' EXPERT ADVICE WAS NOT SOUGHT IN THE DECISIONS WHICH LATER FOLLOWED, PARTICULARLY SINCE HIS FIRM EARLIER HAD GIVEN SOME ADVICE WITH RESPECT TO THE SUN PARLOUR OFFICE PROCEDURES.

11. ON SATURDAY, JUNE 12TH, A.M.C. HAD A MEETING AND IT PURPORTEDLY DECIDED TO TERMINATE ITS ARRANGEMENT WITH SUN PARLOUR AT THAT TIME. A LETTER WAS FORWARDED TO SUN PARLOUR ADVISING OF THE DECISION.

12. ON SUNDAY, JUNE 13TH, SUN PARLOUR HELD A MEETING OF ITS DIRECTORS, AT WHICH THE DIRECTORS WERE ADVISED OF A.M.C.'S DECISION. AS A RESULT THEY ALLEGEDLY DECIDED TO CLOSE DOWN THE SUN PARLOUR OFFICE AND DISCHARGE THE SUN PARLOUR EMPLOYEES. ON MONDAY, JUNE 14TH, THE OFFICE EMPLOYEES WERE TERMINATED BY A LETTER GIVEN TO EACH OF THEM. MR. WILLIAM PAULS UPON ARRIVAL AT THE OFFICE THAT MORNING WAS TOLD THAT HE WAS NOW THE TEMPORARY OFFICE MANAGER FOR A.M.C., A POSITION WHICH HE FILLED FOR SOME WEEKS BEFORE RETURNING TO HIS REGULAR ACCOUNTING PRACTICE. A.M.C. THEN COMMENCED AN OFFICE OPERATION ON THE SAME PREMISES, AT THE SAME LOCATION WITH THE SAME OFFICE MANAGER BUT WITH DIFFERENT EMPLOYEES EXCEPT FOR THREE GROWERS' RELATIVES WHO HAD PREVIOUSLY BEEN EMPLOYED BY SUN PARLOUR.

13. IN OUR OPINION THERE ARE A NUMBER OF SUSPICIOUS FACTORS SURROUNDING THE CIRCUMSTANCES OF THE SUDDEN DEATH OF THE SUN PARLOUR OFFICE OPERATION AND THE HASTY BIRTH OF THE A.M.C. OFFICE OPERATION. FIRST, THE FIGURES PRESENTED INDICATED THAT THE SUN PARLOUR OPERATION WAS NOT A SMALL OPERATION. IT HAD EMPLOYED AT LEAST FIVE FULL-TIME EMPLOYEES ON A REGULAR BASIS AND THEY WERE AUGMENTED DURING THE BUSY SEASON BY OTHERS. ON JUNE 14TH SUN PARLOUR WAS ON THE THRESHOLD OF ITS BUSY SEASON IF NOT JUST INTO ITS BUSY SEASON. THE ACTION TAKEN ALLEGEDLY BY A.M.C. WAS NOT UNILATERAL IN THE SENSE THAT WHILE A.M.C. MIGHT HAVE REMOVED ITS WORK FROM SUN PARLOUR, SUN PARLOUR ALSO OF ITS OWN VOLITION CEDED CERTAIN WORK TO A.M.C. WHICH IT MIGHT HAVE CONTINUED TO PERFORM. THE WORK THAT IT CEDED WAS NOT INSIGNIFICANT CONSIDERING THAT IN PREVIOUS YEARS AT LEAST FIVE PERSONS HAD BEEN PERMANENTLY EMPLOYED TO PERFORM THAT WORK.

14. A.M.C. WAS NOT THE ONLY SOURCE OF WORK FOR SUN PARLOUR EMPLOYEES BECAUSE SUN PARLOUR ALSO PERFORMED WORK FOR GARDEN ACRE SALES, AN AGENCY OF ONTARIO GREENHOUSE PRODUCERS MARKETING BOARD (HEREINAFTER REFERRED TO AS GARDEN ACRE SALES). NO EVIDENCE WAS ADDUCED BY SUN PARLOUR INDICATING THAT GARDEN ACRE SALES HAD WITHDRAWN ITS WORK AND NO EXPLANATION WAS GIVEN AS TO WHAT HAPPENED TO THAT SOURCE OF WORK AND WHY SUN PARLOUR EMPLOYEES, OR SOME OF THEM, DID NOT CONTINUE TO PERFORM THE GARDEN ACRE SALES WORK.

15. IN ADDITION, THERE IS THE "CLEAN-UP" WORK. THE WORK DID NOT COME TO AN ABRUPT END ON JUNE 14TH. THERE WAS STILL A PLANT STAFF FOR WHOM A PAYROLL WAS NECESSARY. MR. DERBYSHIRE, THE PLANT MANAGER, INDICATED THAT HE WAS CO-OPTED FOR THAT PURPOSE AND HE STATED THAT ASSISTANCE WAS REQUIRED. HE ATTEMPTED TO OBTAIN THE SERVICES OF MRS. CATHERINE HOTZON, ONE OF THE AGGRIEVED, BECAUSE AS HE STATED "SHE HAD DONE A VERY GOOD JOB ON THE PAYROLL". HE WAS EVENTUALLY TOLD THAT MRS. HOTZON'S SERVICES WERE NOT REQUIRED AND OTHERS HAD BEEN HIRED AT A.M.C. TO PERFORM THAT TASK. HOWEVER, THERE WAS AN IMMEDIATE PERIOD AFTER THE SEVERANCE ON JUNE 12TH WHEN AT LEAST PART OF THAT WORK WAS AVAILABLE. WHY WAS MRS. HOTZON NOT RETAINED TO COMPLETE THAT WORK? NO SATISFACTORY EXPLANATION HAS BEEN GIVEN.

16. IN ADDITION, THERE WAS THE WORK OF PUTTING MATTERS IN ORDER. MR. KOOP, WHO IS A DIRECTOR OF BOTH SUN PARLOUR AND A.M.C., STATED IN EVIDENCE THAT ON JUNE 13TH NO DECISION HAD BEEN REACHED AS TO HOW THE SUN PARLOUR "MESS" WAS TO BE CLEANED UP. SHORTLY THEREAFTER A DECISION WAS REACHED TO HAVE THE SUN PARLOUR ACCOUNTING FIRM DO THAT WORK. BUT AT THE TIME OF SEVERANCE THE WORK REMAINED TO BE DONE AND FROM THE EVIDENCE THE CLEAN-UP APPEARED TO BE CONSIDERABLE. THERE WAS NO DISSATISFACTION WITH THE WORK OF THE INDIVIDUAL OFFICE EMPLOYEES AND MANY HAD PERFORMED FOR SOME TIME THE TYPE OF WORK THAT REMAINED TO BE DONE. ON JUNE 13TH WITH NO DECISION HAVING BEEN MADE AS TO HOW THE BOOKS AND RECORDS OF SUN PARLOUR WERE TO BE UPDATED AND PUT IN ORDER WHY WERE THE EMPLOYEES WHO WERE FAMILIAR WITH THOSE BOOKS AND RECORDS NOT KEPT ON AT LEAST UNTIL A DECISION WAS MADE AS TO HOW THESE MATTERS WERE TO BE PUT IN ORDER? THE WITHDRAWAL OF ITS WORK BY A.M.C. DOES NOT ANSWER THAT QUESTION NOR DOES THE EVIDENCE ADDUCED BY SUN PARLOUR.

17. THERE IS ALSO THE TIMING OF THE SEVERANCE. IT WAS OBVIOUS THAT THE OFFICE SITUATION WAS IN AN UNDESIRABLE STATE. WHY DID THE SEVERANCE OCCUR ON JUNE 14TH JUST AFTER SUN PARLOUR HAD FOUND THAT WHAT IT THOUGHT TO BE A "DEAD ISSUE" HAD REVIVED; THAT IS THAT THE UNION HAD BEEN CERTIFIED AND SUN PARLOUR WAS NOW REQUIRED TO BARGAIN. THE OPINION HELD BY SUN PARLOUR THAT MATTERS WERE A DEAD ISSUE IN PART EXPLAINS THE DELAY OF SUN PARLOUR TO ACT WHEN IT FIRST FOUND OUT ABOUT THE UNION. THE TIMING OF THE DISMISSALS WITHIN A SHORT PERIOD AFTER SUN PARLOUR FOUND OUT ABOUT THE UNION'S REVIVAL, IN OUR VIEW, IS MORE

THAN COINCIDENTAL. NO SATISFACTORY EXPLANATION WAS GIVEN AS TO WHY THE SEVERANCE TOOK PLACE ON JUNE 14TH. THE STATE OF THE OFFICE HAD BEEN THAT WAY FOR SOME WEEKS. A MEETING BEEN HELD AS EARLY AS APRIL TO DISCUSS THE SITUATION. A CONSULTANT HAD BEEN ASKED AND HAD APPARENTLY REPORTED ON THE OFFICE SITUATION. THE REASONS GIVEN IN EVIDENCE AS TO WHY THE DISCHARGES OCCURRED ON JUNE 14TH CONCERNED THE GROWERS' PAY. THE GROWERS' PAY IS A PAYMENT BY A.M.C. TO VARIOUS GROWERS WHO SUPPLIED THEM WITH PRODUCE. THIS WAS AN IMPORTANT FACTOR IN THE OPERATIONS OF A.M.C. AND IT WAS SUGGESTED IN EVIDENCE THAT THE DECISION TO REMOVE THE WORK FROM SUN PARLOUR ON JUNE 12TH WAS PRECIPITATED BECAUSE THE GROWERS' PAY MIGHT NOT BE MET FOR THE WEEK ENDING JUNE 17TH. HOWEVER, THE GROWERS' PAY HAD BEEN MET WEEKLY IN ACCORDANCE WITH THE DEADLINE. IT IS TRUE THAT THERE WAS SOME SUGGESTION THAT DIFFICULTY MIGHT ARISE FOR THE FOLLOWING WEEK, BUT SIMILAR SUGGESTIONS AS TO THE GROWERS' PAY HAD BEEN MADE FOR SOME WEEKS AND THAT STATE OF AFFAIRS WAS CONSTANT SINCE MAY. CERTAINLY THAT PARTICULAR SITUATION HAD NOT WORSENERED AND CERTAINLY THE ADVENT OF MR. PAULS AUGURED FOR AN IMPROVEMENT IN THIS AREA. IN THE LIGHT OF PAST EVENTS THAT EXPLANATION DOES NOT SUFFICE TO ACCOUNT FOR THE TIMING OF THE DISCHARGE.

18. EVEN IF THESE MATTERS WERE ONLY SUSPICIOUS, AND IT IS CONCEIVABLE THAT A PRUDENT BUSINESSMAN MIGHT DECIDE IN THIS DETERIORATED OFFICE SITUATION TO WIPE THE SLATE CLEAN AND RID HIMSELF OF THE OFFICE STAFF, THERE ARE OTHER EVENTS WHICH SUGGEST THAT THE REASONS GIVEN FOR DISMISSING THE EMPLOYEES ARE NOT THE ONES GIVEN IN EVIDENCE. MR. PAULS WAS SIMPLY TOLD WHEN HE CAME TO THE OFFICE ON THE MORNING OF JUNE 14TH THAT HE WAS NO LONGER WORKING FOR SUN PARLOUR BUT WOULD BE WORKING FOR A.M.C. ONE WONDERS WHY THE SAME CONTINUITY OF EMPLOYMENT WAS NOT MADE AVAILABLE TO MR. STENGER WHO WAS THE ASSISTANT OFFICE MANAGER AND HAD BEEN EMPLOYED BY SUN PARLOUR FOR APPROXIMATELY SIX YEARS. SINCE OTHER EMPLOYEES OF SUN PARLOUR RECEIVED EMPLOYMENT AND SINCE THERE WAS NO OBJECTION TO MR. STENGER'S WORK WHY WAS HE NOT TRANSFERRED OR EVEN TOLD ABOUT THE AVAILABILITY OF EMPLOYMENT AT A.M.C. ON THAT MORNING? AFTER CONSIDERING THE COMMONALITY OF DIRECTORS IN SUN PARLOUR AND A.M.C. IT WAS, IN OUR VIEW, NOT A REASONABLE RESPONSE FOR AN EMPLOYER TO ABRUPTLY SEVER AN ADMITTEDLY SATISFACTORY EMPLOYEE WITH SIX YEARS SERVICE AND NOT INDICATE TO HIM THAT OTHER EMPLOYMENT WAS AVAILABLE ON THE SAME PREMISES, DOING THE SAME WORK WITH THE SAME OFFICE MANAGER IN AN ASSOCIATED COMPANY - ASSOCIATED IN INTEREST AND ASSOCIATED BY COMMON DIRECTORS. THIS ASSOCIATED COMPANY HIRED THREE LESS EXPERIENCED EMPLOYEES. THE ONLY REASON GIVEN FOR DENYING EMPLOYMENT TO MR. STENGER (AND THE SAME REASON WAS GIVEN FOR THE OTHER AGGRIEVED EMPLOYEES) IS THAT WHEN MR. STENGER APPLIED TO A.M.C. IT WAS TOO LATE. WHY WAS HE NOT TOLD OF THE AVAILABILITY OF EMPLOYMENT AT A.M.C., AND WHY WAS THE SAME PATTERN NOT FOLLOWED WITH HIM AS IT WAS WITH MR. PAULS?

19. THE RESPONDENTS, SUN PARLOUR AND A.M.C., WOULD HAVE US BELIEVE THAT THE THREE RELATIVES HAVING LESS EXPERIENCE THAN AT LEAST

THREE OF THE AGGRIEVED EMPLOYEES, WENDED THEIR WAY BACK TO A.M.C. IN TIME TO OBTAIN EMPLOYMENT WHILE THE AGGRIEVED EMPLOYEES APPLIED TOO LATE. IT STRAINS OUR CREDULITY TO ACCEPT THIS FACT AS A COINCIDENCE AND WE ARE FURTHER STRAINED WHEN WE ARE ASKED TO ACCEPT THIS COINCIDENCE IN THE LIGHT OF PAST EVENTS SHOWN WHEREIN TWO OF THESE RELATIVES HAD BEEN INSTRUMENTAL IN THE HOLDING OF THE MEETING ON COMPANY PREMISES THAT ORIGINATED THE PETITION IN OPPOSITION TO THE UNION. THE RESPONDENTS WOULD ALSO HAVE US BELIEVE THIS TOO WAS A COINCIDENCE. WE DO NOT ACCEPT THE COINCIDENCE UPON COINCIDENCE. FURTHER, THE THEORY PUT FORWARD BY THE RESPONDENT THAT THE AGGRIEVED EMPLOYEES SIMPLY APPLIED TOO LATE TO OBTAIN WORK AT A.M.C. IS SIMPLY NOT ACCEPTABLE IN THE LIGHT OF ALL THE CONSIDERATIONS AND PARTICULARLY IN VIEW OF MR. PAULS' EVIDENCE THAT WHEN "MRS. HOTZON APPLIED THERE WAS WORK AVAILABLE TO BE DONE".

20. IN THE RESULT WE DO NOT ACCEPT THE REASONS GIVEN BY SUN PARLOUR FOR DISCHARGING THE AGGRIEVED EMPLOYEES, NOR DO WE ACCEPT THE REASONS GIVEN BY A.M.C. FOR REFUSING TO EMPLOY THESE EMPLOYEES. THIS BOARD HAS INDICATED IN NUMEROUS DECISIONS THAT WHERE EMPLOYEES ARE DISCHARGED FOR UNION ACITIVITY IT IS RARE THAT THE TRUE REASONS FOR THEIR DISCHARGE ARE GIVEN. ALSO, WHERE THERE IS A REFUSAL TO EMPLOY PERSONS BECAUSE OF THEIR TRADE UNION ACTIVITY THE REASONS ARE NOT USUALLY GIVEN. THE BOARD IS THEREFORE PLACED IN THE POSITION OF ATTEMPTING TO ASCERTAIN THE TRUE REASONS FOR DISCHARGE OR FAILURE TO EMPLOY FROM ALL THE EVIDENCE AND THE SURROUNDING FACTORS. IN THIS CASE WE ARE SATISFIED THAT BOTH SUN PARLOUR AND A.M.C. HAD KNOWLEDGE OF THE UNION ACTIVITY OF THE AGGRIEVED EMPLOYEES AND AFTER CONSIDERING THEIR SERVICE WITH SUN PARLOUR, THE ABRUPT MANNER IN WHICH THEY WERE DISMISSED, THE RELATIONSHIP BETWEEN SUN PARLOUR AND A.M.C., THE EXPLANATION GIVEN AS TO WHY THESE EMPLOYEES WERE NOT HIRED AND THE GENERAL COURSE OF EVENTS AND CONDUCT, WE ARE OF THE OPINION THAT THE EMPLOYEES CONCERNED WERE DISCHARGED FOR UNION ACTIVITY BY SUN PARLOUR AND WERE NOT EMPLOYED BY A.M.C. BECAUSE OF THAT UNION ACTIVITY.

21. IN OUR OPINION AFTER CONSIDERING ALL THE FACTS AND THE CIRCUMSTANCES OF THIS CASE WE ARE SATISFIED THAT THE RESPONDENT SUN PARLOUR HAS VIOLATED SECTION 58(A) OF THE LABOUR RELATIONS ACT BY REFUSING TO CONTINUE TO EMPLOY THE AGGRIEVED EMPLOYEES; AND THE RESPONDENT A.M.C. HAS ALSO VIOLATED SECTION 58(A) BY REFUSING TO EMPLOY THE AGGRIEVED EMPLOYEES BECAUSE THEY WERE MEMBERS OF A TRADE UNION OR WERE EXERCISING THEIR RIGHTS UNDER THE ACT AS ALLEGED IN PARAGRAPH 4(B) OF THE COMPLAINT.

22. WE NOTE THAT WHILE THE RESPONDENT A.M.C. PLEADED A DENIAL OF JURISDICTION AS A RESULT OF SECTION 2(B) OF THE ACT, THAT THAT MATTER WAS NOT PRESSED AT THE HEARING AND INDEED FROM THE EVIDENCE QUITE PROPERLY SO.

23. IN THE RESULT, THEREFORE, AND IN ACCORDANCE WITH THE AGREE-

MENT OF THE PARTIES THE AGGRIEVED EMPLOYEES ARE ENTITLED TO COMPENSATION FROM THE RESPONDENTS, SUN PARLOUR AND A.M.C., IN AN AMOUNT TO BE DETERMINED BY THE PARTIES AND FAILING AGREEMENT THE BOARD WILL REMAIN SEIZED OF THAT MATTER.

24. THE AGGRIEVED EMPLOYEES ARE TO BE FORTHWITH REINSTATED BY THE RESPONDENT, SUN PARLOUR, TO THEIR FORMER EMPLOYMENT, OR IN THE ALTERNATIVE THE RESPONDENT A.M.C. IS DIRECTED TO EMPLOY THE AGGRIEVED EMPLOYEES. THE BOARD WILL REMAIN SEIZED OF THIS MATTER SHOULD THERE BE ANY DIFFICULTIES IN THE IMPLEMENTATION OF THIS DECISION.

DECISION OF BOARD MEMBER J.D. BELL: JANUARY 26, 1972.

1. I DO NOT AGREE WITH THE DECISION OF THE MAJORITY OF THE BOARD.
2. SUN PARLOUR GREENHOUSE GROWERS CO-OPERATIVE LIMITED (HEREINAFTER REFERRED TO AS SUN PARLOUR) HAD AGREED TO SUPPLY THE FACILITIES AND STAFF TO PERFORM THE NECESSARY OFFICE FUNCTIONS FOR THE NEWLY CREATED COMPANIES - A.M.C. PRODUCE SHIPPERS INCORPORATED (HEREINAFTER REFERRED TO AS A.M.C.) AND GARDEN ACRE SALES, AN AGENCY OF ONTARIO GREENHOUSE PRODUCERS MARKETING BOARD (HEREINAFTER REFERRED TO AS GARDEN ACRE SALES) - WHEN THEY CAME INTO OPERATION IN MARCH 1971. THE ACTION WAS TAKEN IN ORDER TO UTILIZE THE STAFF AND FACILITIES OF SUN PARLOUR WHICH OTHERWISE WOULD BECOME REDUNDANT WITH THE ESTABLISHMENT OF A.M.C. AND GARDEN ACRE SALES.
3. THE EVIDENCE BEFORE THE BOARD INDICATES THAT THE PERFORMANCE OF THE SUN PARLOUR OFFICE BEGAN TO DETERIORATE IN LATE 1970 AND BECAME PROGRESSIVELY WORSE. THE CHANGE-OVER TO PERFORM THE OFFICE FUNCTIONS OF A.M.C. AND GARDEN ACRE SALES DID NOT IMPROVE THE SITUATION AND DURING APRIL AND MAY IT CONTINUED TO DETERIORATE FURTHER. AT THIS POINT I AGREE WITH THE MAJORITY OF THE BOARD THAT IT IS QUITE LIKELY THAT THIS DETERIORATION CAUSED THE EMPLOYEES TO SEEK MEMBERSHIP IN THE COMPLAINANT UNION.
4. WHEN MR. PAULS ARRIVED AT SUN PARLOUR ON JUNE 8, 1971, HE FOUND THAT THE BOOKS OF A.M.C. WERE, TO USE HIS TERM, "PATHETICALLY BEHIND". HE REPORTED THIS TO THE COMPANY OFFICERS CONCERNED WHO WERE CONFRONTED WITH WHAT TO THEM APPEARED TO BE AN IMPOSSIBLE SITUATION. CASH WAS LYING IDLE WHILE BANK LINES OF CREDIT WERE OVERDRAWN. BILLS WERE UNPAID AND GROWERS' PAY WAS IN JEOPARDY. IT WAS OBVIOUS THAT SOMETHING HAD TO BE DONE TO PRESERVE THE BUSINESS. THEREFORE THE OFFICERS OF A.M.C. MET AND DECIDED TO ADVISE SUN PARLOUR THAT IT WAS CANCELLING THE AGREEMENT TO HAVE SUN PARLOUR PERFORM IT'S OFFICE FUNCTIONS.
5. ACCORDING TO THE EVIDENCE OF MR. PAULS THIS ACTION LEFT SUN

PARLOUR WITH ONLY WORK FOR ONE PERSON, THE HANDLING OF SUPPLY SALES TO GROWERS. AS A RESULT ALL SUN PARLOUR'S EMPLOYEES WERE TERMINATED AND THE HANDLING OF SUPPLY SALES TO GROWERS WAS TAKEN OVER BY A.M.C.

6. A.M.C. REMOVED THE OFFICE WORK FROM SUN PARLOUR TO ENSURE THAT THE BUSINESS DID NOT FAIL. SUN PARLOUR THEN TERMINATED THE GRIEVORS BECAUSE THEIR JOB HAD DISAPPEARED. THIS IS NOT A VIOLATION OF SECTION 58(A) OF THE LABOUR RELATIONS ACT.

7. I FURTHER DISAGREE THAT THE FACT THAT A.M.C. DID NOT OFFER WORK TO THE GRIEVORS IS A VIOLATION OF SECTION 58(A) OF THE LABOUR RELATIONS ACT. THE EVIDENCE BEFORE THE BOARD DOES NOT, IN MY OPINION, SHOW THAT A.M.C. REFUSED TO EMPLOY THE GRIEVORS BECAUSE THEY WERE OR ARE MEMBERS OF A TRADE UNION.

8. I WOULD DISMISS THE COMPLAINT.

1367-71-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. MCLEOD & SONS (RESPONDENT) V. INTERNATIONAL BROTHERHOOD OF PAINTERS AND ALLIED TRADES, LOCAL UNION 1824 (INTERVENER).

BEFORE: R.A. FURNESS, VICE CHAIRMAN AND BOARD MEMBERS O. HODGES AND J.E.C. ROBINSON, Q.C.

APPEARANCES AT THE HEARING: EDWARD VANDERKLOET AND STAN DEJONG FOR THE APPLICANT; NO ONE APPEARING FOR THE RESPONDENT; A.M. MINSKY, DAVID CAIRNS AND ALBERT ROSS FOR THE INTERVENER.

DECISION OF THE BOARD: JANUARY 27, 1972.

1. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(N) OF THE LABOUR RELATIONS ACT.

2. THE BOARD FURTHER FINDS THAT THIS IS AN APPLICATION FOR CERTIFICATION WITHIN THE MEANING OF SECTION 108 OF THE LABOUR RELATIONS ACT.

3. THE APPLICANT IS SEEKING CERTIFICATION OF A BARGAINING UNIT OF EMPLOYEES DESCRIBED AS:

"ALL PAINTERS AND DECORATORS AND APPRENTICES EMPLOYED BY THE RESPONDENT AND WORKING IN GEOGRAPHIC AREA NO. 4 SET BY THE ONTARIO LABOUR RELATIONS BOARD, CONSTRUCTION INDUSTRY DIVISION, SAVE AND EXCEPT

NON-WORKING FOREMEN AND PERSONS ABOVE
THE RANK OF NON-WORKING FOREMAN."

REGULAR BOARD GEOGRAPHIC AREA No. 4 CONSISTS OF THE COUNTIES
OF BRANT AND NORFOLK.

4. THIS APPLICATION FOR CERTIFICATION WAS FILED ON DECEMBER 11, 1971. THE INTERVENER ALLEGED THAT THIS APPLICATION FOR CERTIFICATION WAS UNTIMELY BY VIRTUE OF SECTION 53(2) OF THE LABOUR RELATIONS ACT IN THAT THE INTERVENER IS THE BARGAINING AGENT FOR THE SUBJECT EMPLOYEES AND THAT ON OCTOBER 4, 1971 THE MINISTER OF LABOUR APPOINTED A CONCILIATION OFFICER TO CONFER WITH THE RESPONDENT AND THE INTERVENER TO EFFECT A NEW COLLECTIVE AGREEMENT BETWEEN THEM COVERING THE SUBJECT EMPLOYEES ENGAGED IN BOARD GEOGRAPHIC AREA No. 4.

5. THE APPLICANT AGREED TO THE FACTS CONCERNING THE APPOINTMENT OF THE CONCILIATION OFFICER AND ALSO AGREED WITH THE INTERVENER THAT ON OCTOBER 13, 1971 THE MINISTER OF LABOUR HAD SENT A LETTER TO THE RESPONDENT AND THE INTERVENER INFORMING THEM THAT HE HAD DECIDED NOT TO APPOINT A BOARD OF CONCILIATION IN REFERENCE TO THE DISPUTE BETWEEN THEM.

6. THE APPLICANT AND THE INTERVENER ALSO AGREED THAT THE INTERVENER ACQUIRED THE BARGAINING RIGHTS FOR THE EMPLOYEES AFFECTED BY THIS APPLICATION BY VIRTUE OF A DECISION OF THE BOARD DATED DECEMBER 8, 1970. IN THIS DECISION DATED DECEMBER 8, 1970 (SEE BOARD FILE No. 18568-70-R) THE BOARD DECLARED PURSUANT TO SECTION 47(1) [NOW SECTION 54(1)] OF THE LABOUR RELATIONS ACT THAT THE INTERNATIONAL BROTHERHOOD OF PAINTERS AND ALLIED TRADES - LOCAL UNION 1824 BY REASON OF A MERGER, AMALGAMATION OR TRANSFER OF JURISDICTION HAD ACQUIRED THE RIGHTS, PRIVILEGES AND DUTIES OF THE INTERNATIONAL BROTHERHOOD OF PAINTERS & ALLIED TRADES, LOCAL UNION 1668, WHICH WAS THE BARGAINING AGENT FOR A UNIT OF EMPLOYEES OF MCLEOD & SONS DEFINED IN A COLLECTIVE AGREEMENT BETWEEN MCLEOD & SONS AND THE BROTHERHOOD OF PAINTERS DECORATORS, AND PAPERHANGERS OF AMERICA LOCAL 1668, IN EFFECT UNTIL APRIL 30, 1970, AND FROM YEAR TO YEAR THEREAFTER SUBJECT TO NOTICE.

7. THE UNIT OF EMPLOYEES REFERRED TO IN PARAGRAPH SIX HEREIN WAS AGREED BY THE APPLICANT AND THE INTERVENER TO BE ALL EMPLOYEES EMPLOYED BY THE RESPONDENT AS JOURNEYMEN PAINTERS, PAINTERS, DECORATORS, PAPERHANGERS AND THEIR APPRENTICES AND WORKING FOREMEN IN THE COUNTIES OF BRANT AND NORFOLK.

8. THE APPLICANT DID NOT DISPUTE THE DECISION OF THE BOARD DATED DECEMBER 8, 1970 OR THE FACTS RELATING TO THAT DECISION. THE APPLICANT ALSO ACKNOWLEDGED THAT THE MINISTER OF LABOUR HAD PRESUMABLY GRANTED CONCILIATION SERVICES TO THE RESPONDENT AND THE INTERVENER, AS REFERRED TO IN PARAGRAPHS FOUR AND FIVE HEREIN, ON THE BASIS OF THE EVIDENCE BEFORE HIM.

9. HOWEVER, THE APPLICANT STATED THAT AS A RESULT OF ITS INVESTIGATIONS IT ALLEGED AND DESIRED TO INTRODUCE EVIDENCE BEFORE THE BOARD TO ESTABLISH THAT THE PREDECESSOR TRADE UNION REFERRED TO IN PARAGRAPH SIX HEREIN IN FACT NEVER HAD BARGAINING RIGHTS WITH RESPECT TO THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT REFERRED TO IN PARAGRAPH SEVEN HEREIN AND AFFECTED BY THIS APPLICATION. THE APPLICANT CONTENDED THAT THE BOARD IN ITS DECISION DATED DECEMBER 8, 1970 (SEE BOARD FILE 18568-70-R) HAD ERRONEOUSLY MADE THE DECLARATION CONTAINED THEREIN HAVING REGARD TO THE FACTS WHICH THE APPLICANT NOW WISHED TO ESTABLISH BEFORE THE BOARD. THE APPLICANT FURTHER CONTENDED THAT, IN TURN, THE MINISTER OF LABOUR HAD AS A RESULT ERRONEOUSLY GRANTED CONCILIATION SERVICES TO THE RESPONDENT AND THE INTERVENER.

10. THE BOARD HAS CONSIDERED THE REPRESENTATIONS OF THE PARTIES. THE APPLICANT IS REQUESTING THE BOARD TO REVIEW AND ACT AS AN APPELLATE TRIBUNAL WITH RESPECT TO A DECISION OF A PANEL OF THE BOARD DIFFERENTLY CONSTITUTED FROM THE PANEL OF THE BOARD SEIZED WITH THE INSTANT APPLICATION FOR CERTIFICATION AND TO SET ASIDE AN ACT OF THE MINISTER OF LABOUR IN GRANTING CONCILIATION SERVICES TO THE RESPONDENT AND THE INTERVENER.

11. IT IS NOT THE FUNCTION OF THE BOARD TO ACT AS AN APPELLATE TRIBUNAL WITH RESPECT TO A DECISION OF A PANEL OF THE BOARD DIFFERENTLY CONSTITUTED. IN ADDITION, SECTION 54(3) [FORMERLY SECTION 47(3)] OF THE LABOUR RELATIONS ACT MAKES IT QUITE CLEAR THAT IN AN AFFIRMATIVE DECLARATION BY THE BOARD UNDER SECTION 54(1) [FORMERLY 47(1)] OF THE LABOUR RELATIONS ACT THE SUCCESSOR TRADE UNION SHALL FOR THE PURPOSES OF THE LABOUR RELATIONS ACT BE CONCLUSIVELY PRESUMED TO HAVE ACQUIRED THE RIGHTS, PRIVILEGES AND DUTIES OF ITS PREDECESSOR. MOREOVER, THE BOARD DOES NOT HAVE THE JURISDICTION TO SET ASIDE A DECISION OF THE MINISTER OF LABOUR TO GRANT CONCILIATION SERVICES PURSUANT TO THE LABOUR RELATIONS ACT.

12. THE BOARD FINDS THAT THE MATTERS ON WHICH THE APPLICANT SEEKS TO ADDUCE EVIDENCE BEFORE IT HAVE ALREADY BEEN DETERMINED BY THE BOARD IN BOARD FILE #18568-70-R. ACCORDINGLY, IN ALL THE CIRCUMSTANCES OF THIS APPLICATION, THE BOARD WILL NOT IN THIS APPLICATION ACCEDE TO THE REQUEST OF THE APPLICANT THAT IT BE PERMITTED TO ADDUCE EVIDENCE ON THE MATTERS REFERRED TO IN PARAGRAPH NINE HEREIN.

13. IN THE LIGHT OF THE FOREGOING AND HAVING REGARD TO THE PROVISIONS OF SECTION 53(2) OF THE LABOUR RELATIONS ACT, THE BOARD FINDS THAT THIS APPLICATION FOR CERTIFICATION IS UNTIMELY AND ACCORDINGLY THIS APPLICANT IS DISMISSED.

1251-71-U: MRS. ODETTE VAN DER WOLF (COMPLAINANT) V. UNITED STEELWORKERS OF AMERICA, DISTRICT NO. 6 (RESPONDENT) V. ESSEX INTERNATIONAL OF CANADA LIMITED (INTERVENER).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS J. D. BELL AND P. J. O'KEEFE.

APPEARANCES AT THE HEARING: MRS. ODETTE VAN DER WOLF AND J. K. VAN DER WOLF FOR THE COMPLAINANT; LORNE INGLE AND RICHARD TIMLECK FOR THE RESPONDENT; DAVID C. COLEMAN AND JACK R. JUPP FOR THE INTERVENER.

DECISION OF THE BOARD: JANUARY 27, 1972.

1. THE NAME "UNITED STEELWORKERS OF AMERICA DISTRICT No. 6" APPEARING IN THE STYLE OF CAUSE OF THIS APPLICATION AS THE NAME OF THE RESPONDENT IS AMENDED TO READ: "UNITED STEELWORKERS OF AMERICA, DISTRICT No. 6".

2. THIS IS A COMPLAINT UNDER SECTION 79 OF THE LABOUR RELATIONS ACT IN WHICH THE COMPLAINANT ALLEGES THAT SHE HAS BEEN DEALT WITH BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF SECTION 60 OF THE ACT. SECTION 60 PROVIDES AS FOLLOWS:

"A TRADE UNION OR COUNCIL OF TRADE UNIONS, SO LONG AS IT CONTINUES TO BE ENTITLED TO REPRESENT EMPLOYEES IN A BARGAINING UNIT, SHALL NOT ACT IN A MANNER THAT IS ARBITRARY, DISCRIMINATORY OR IN BAD FAITH IN THE REPRESENTATION OF ANY OF THE EMPLOYEES IN THE UNIT, WHETHER OR NOT MEMBERS OF THE TRADE UNION OR OF ANY CONSTITUENT UNION OF THE COUNCIL OF TRADE UNIONS, AS THE CASE MAY BE."

3. THE COMPLAINANT WAS DISMISSED BY ESSEX INTERNATIONAL OF CANADA LIMITED, THE INTERVENER HEREIN, ON FEBRUARY 4, 1971. THE REASONS GIVEN BY THE EMPLOYER FOR THE DISCHARGE WERE, THE COMPLAINANT'S LOW EFFICIENCY AND COMPLETE LACK OF EFFORT.

4. FOLLOWING HER DISCHARGE, THE COMPLAINANT GOT IN TOUCH WITH MR. R. TIMLECK, PRESIDENT OF THE UNION. HE REQUESTED HER TO SET OUT THE CIRCUMSTANCES SURROUNDING HER DISCHARGE IN WRITING AND TO SUBMIT IT TO HIM. ON RECEIPT OF HER WRITTEN ACCOUNT OF THE DISCHARGE, MR. TIMLECK FILED A FORMAL GRIEVANCE ON HER BEHALF. THE GRIEVANCE ALLEGED THAT THE COMPLAINANT WAS DISCHARGED UNJUSTLY AND WITHOUT PROPER CAUSE.

5. THE LETTER TO MR. TIMLECK, OUTLINING THE POSITION OF MRS. VAN DER WOLF, MADE REFERENCE TO A LAYOFF DURING WHICH SHE WAS WITHOUT EMPLOYMENT FROM MAY 8, 1967 UNTIL NOVEMBER 22, 1967. MENTION OF THIS INCIDENT IS MADE IN THE COMPLAINT FILED WITH THE BOARD WHEREIN THE COMPLAINANT CONTENDS THAT JUNIOR EMPLOYEES WERE PERMITTED TO REPLACE HER DURING THE LAYOFF WITHOUT PROTEST BY THE BARGAINING AGENT'S REPRESENTA-

TIVE AT LOCAL OR DISTRICT LEVELS. IN HER LETTER TO TIMLECK, HOWEVER, SHE STATES THAT HER RETURN FOLLOWED AN INTERVENTION BY THE CHAIRMAN'S UNION (SIC) WHICH INDICATES THAT ACTION WAS TAKEN ON HER BEHALF BY THE UNION, ALTHOUGH SHE DID NOT APPEAR TO BE ENTIRELY SATISFIED WITH THE RESULTS OF THIS INTERVENTION. THE UNION OBJECTED TO THIS PART OF THE COMPLAINT BECAUSE AT THE TIME OF THE INCIDENT, THE SECTION UPON WHICH THIS COMPLAINT IS BASED WAS NOT IN EXISTENCE AND BECAUSE, IN ANY EVENT, THE INCIDENT WAS TOO REMOTE IN TIME TO CONSTITUTE A PROPER BASIS FOR A COMPLAINT. THE COMPLAINANT STATED AT THE HEARING THAT THE INCIDENT OF THE LAYOFF WAS NOT CONNECTED IN ANY WAY WITH THE DISCHARGE. IN OUR OPINION, THE OBJECTION OF THE UNION IS A VALID ONE AND THIS PARTICULAR INCIDENT OUGHT NOT TO BE INCORPORATED INTO THE PRESENT COMPLAINT.

6. FOLLOWING THE FILING OF THE GRIEVANCE, TIMLECK ATTENDED A MEETING WITH MR. PADDON, THE COMPANY'S PERSONNEL MANAGER, IN WHICH HE ASKED THAT MRS. VAN DER WOLF BE REINSTATED WITH FULL COMPENSATION. HE ARGUED THAT SHE HAD BEEN EMPLOYED BY THE COMPANY FOR FIVE YEARS AND STATED THAT HE COULDN'T UNDERSTAND WHY SHE SHOULD BE DISMISSED. HE URGED UPON THE COMPANY THAT THEY CONSIDER THE FACT THAT WHILE HER PRODUCTION LEVEL WAS LOW ALL DURING HER EMPLOYMENT, IT HAD REMAINED STEADY. IN HER LETTER TO TIMLECK, SHE HAD MENTIONED THAT THE MACHINE SHE WAS WORKING ON WAS DEFECTIVE. HE, IN TURN, RAISED THIS POINT WITH PADDON. THE LATTER TOLD HIM THAT THE MACHINE HAD BEEN CHECKED, THAT IT WAS NOT A GOOD MACHINE, THAT THE OTHER EMPLOYEES HAD PERFORMED SATISFACTORY ON THE MACHINE. WITH RESPECT TO TIMLECK'S ARGUMENT, BASED ON THE COMPLAINANT'S FIVE YEAR EMPLOYMENT, PADDON REPLIED THAT IT WAS ABOUT TIME THAT SOMETHING BE DONE ABOUT HER INEFFICIENCY.

7. TIMLECK ATTENDED A FURTHER MEETING WITH PADDON AND THE UNION GRIEVANCE COMMITTEE. DURING THE COURSE OF THIS MEETING WHICH DEALT WITH SEVERAL GRIEVANCES, THAT OF VAN DER WOLF WAS AGAIN DISCUSSED. FOLLOWING THIS MEETING, THE UNION RECEIVED A LETTER FROM PADDON DATED FEBRUARY 16, 1971 WHICH CONTAINS THE FOLLOWING REMARKS WITH RESPECT TO THE COMPLAINANT'S GRIEVANCE:

"3. GRIEVANCE RE ODETTE VAN DER WOLFE -

AS WE HAVE DISCUSSED MANY TIMES THIS PLANT IS RUNNING INTO SERIOUS ECONOMIC PROBLEMS. IT IS NECESSARY FOR MANAGEMENT TO REVIEW THE PERFORMANCE OF EVERY EMPLOYEE TO INSURE THAT ALL EMPLOYEES ARE PERFORMING PRODUCTIVE WORK EFFICIENTLY.

THIS EMPLOYEE WAS GIVEN MORE THAN ARE (SIC) AMPLE OPPORTUNITY TO IMPROVE HER WORK HABITS AND EFFICIENCY.

SHE COULD NOT OR WOULD NOT WORK ON ANY JOB THAT REQUIRED WORKING IN A STANDING POSITION; THIS RULES OUT WORKING ON THE ROTARIES, BRAIDERS, HOLDERS AND MOST TYPES OF REPAIR WORK.

WE TRIED TO FIND PRODUCTIVE WORK FOR HER IN PRACTICALLY EVERY COST CENTRE. SHE WAS GIVEN A WARNING FOR POOR WORK HABITS AND LOW EFFICIENCY BY R. WAGNER ON NOVEMBER 20, 1970.

SHE WAS THEN GIVEN ANOTHER SIMPLE ASSEMBLY JOB IN COST CENTRE 1, AGAIN ON JANUARY 19, 1971 IT WAS NECESSARY TO GIVE HER A VERBAL REPRIMAND FOR POOR WORK HABITS AND LOW EFFICIENCY - ON THE 3RD OF FEBRUARY, 1971 SHE WAS GIVEN A WRITTEN REPRIMAND FOR CONTINUOUS LOW EFFICIENCY AND NO IMPROVEMENT IN HER WORK HABITS. SHE WAS INFORMED ON FEBRUARY 3, 1971 THAT UNLESS THERE WAS AN IMMEDIATE IMPROVEMENT, MANAGEMENT WOULD HAVE NO ALTERNATIVE BUT TO DISCHARGE HER.

SHE WAS DISCHARGE FOR LOW EFFICIENCY AND COMPLETE LACK OF EFFORT ON FEBRUARY 4, 1971.

ED PADDON,
PERSONNEL MANAGER."

8. TIMLECK TESTIFIED THAT THERE WAS STILL A FURTHER MEETING HELD WITH THE COMPANY WHICH WAS ATTENDED BY HIMSELF, THE UNION GRIEVANCE COMMITTEE AND A UNITED STEELWORKERS OF AMERICA REPRESENTATIVE. THE COMPANY, HOWEVER, STILL REFUSED TO REINSTATE THE GRIEVOR AND ON MARCH 8, 1971, IN A LETTER DEALING WITH A NUMBER OF GRIEVANCES, THE COMPANY HAD THE FOLLOWING TO SAY WITH RESPECT TO VAN DER WOLF'S GRIEVANCE:

"2. ODETTE VANDERWOLFE - THIS CASE HAS AGAIN BEEN REVIEWED AND IT IS FELT THAT SHE WAS GIVEN EVERY OPPORTUNITY TO PERFORM ASSIGNED WORK EFFICIENTLY IN PRACTICALLY EVERY COST CENTRE. SHE WAS ULTIMATELY DISCHARGED FOR COMPLETE LACK OF EFFORT ON HER PART."

9. FOLLOWING RECEIPT OF MR. PADDON'S LETTER OF MARCH 8, 1971, THE UNION THROUGH MR. HAROLD BROOKS, A REPRESENTATIVE OF THE UNITED STEELWORKERS OF AMERICA, ADVISED THE COMPANY BY LETTER DATED MARCH 15, 1971 THAT IT WAS PROCEEDING TO TAKE THE COMPLAINANT'S GRIEVANCE

TO A BOARD OF ARBITRATION AND FURTHER ADVISED THE COMPANY AS TO THE NAME OF ITS NOMINEE. IN REPLY TO THE UNION'S LETTER, THE COMPANY ON THE 18TH OF MARCH, 1971, REQUESTED BY TELEGRAM AN EXTENSION OF TIME FOR THE SELECTION OF THE COMPANY NOMINEE TO THE BOARD. THE UNION AGREED TO AN EXTENSION TO MARCH 29, 1971. A CHAIRMAN FOR THE BOARD OF ARBITRATION WAS EVENTUALLY SELECTED.

10. BROOKS BECAME THE REPRESENTATIVE OF THE UNITED STEELWORKERS OF AMERICA COVERING AMONG OTHERS THE PLANT OF THE INTERVENER IN MARCH OF 1971 AND TOOK OVER THE MATTER OF THE VAN DER WOLF GRIEVANCE. IT IS HIS ACTIONS THAT ARE ATTACKED IN THE FORMAL COMPLAINT. HE, INCIDENTALLY, HAD NOTHING TO DO WITH THE LAYOFF SITUATION.

11. SHORTLY AFTER BROOKS TOOK OVER AND SUBSEQUENT TO HIS LETTER OF MARCH 15, 1971 REFERRED TO ABOVE, THE COMPANY NOTIFIED THE UNION OF ITS DESIRE TO COMMENCE NEGOTIATIONS FOR THE RENEWAL OF THE COLLECTIVE AGREEMENT. NEGOTIATIONS BEGAN IN APRIL OF 1971.

12. AT THE TIME OF THE START OF NEGOTIATIONS, SEVERAL GRIEVANCES, INCLUDING VAN DER WOLF'S, WERE BEING PROCESSED BY THE UNION AND THE COMPANY. THE COMPANY AGREED TO DISCUSS THESE AS PART OF THE NEGOTIATIONS. BROOKS WHO TOOK PART IN THE NEGOTIATIONS TESTIFIED THAT THE VAN DER WOLF ARBITRATION MATTER WAS DISCUSSED WITH THE COMPANY BUT THAT IT REFUSED TO DO ANYTHING ABOUT THE DISMISSAL. THE UNION PERSISTED IN ITS REPRESENTATIONS AND AFTER CONCESSIONS BY BOTH PARTIES, AN AGREEMENT WAS REACHED WHEREBY VAN DER WOLF WAS TO BE REINSTATED WITH FULL SENIORITY AND WAS TO BE PAID THE EQUIVALENT OF 160 HOURS PAY. THE AGREEMENT WAS SUBJECT TO THE CONCLUSION OF A NEW COLLECTIVE AGREEMENT. THE COLLECTIVE AGREEMENT WAS SIGNED AND THE SETTLEMENT BECAME FIRM.

13. BROOKS ADVISED VAN DER WOLF OF THE SETTLEMENT. SHE OBJECTED AND SAID SHE WANTED FULL REINSTATEMENT. BROOKS TOLD HER THAT IT WAS THE UNION'S OPINION THAT IF SHE WENT TO ARBITRATION SHE MIGHT LOSE HER JOB OUTRIGHT AND THAT HE FELT THIS WAS A DISTINCT POSSIBILITY. BROOKS STATED IN EVIDENCE THAT HE BASED HIS OPINION ON INVESTIGATIONS HE MADE DURING PREPARATIONS FOR THE ARBITRATION. HE TALKED THE MATTER OVER WITH HIS PREDECESSOR UNION REPRESENTATIVE AND WITH TIMLECK WHO HAD LAUNCHED THE GRIEVANCE. HE INTERVIEWED FELLOW WORKERS, ONE OF WHOM WAS A LEAD MAN, IN AN ATTEMPT TO FIND EVIDENCE TO REFUTE THE COMPANY'S STATEMENTS THAT THE COMPLAINANT WAS INEFFICIENT. HE COULD NOT GET SUCH EVIDENCE. ALL OF THIS, TOGETHER WITH THE FACT THAT THE GRIEVOR HAD RECEIVED THREE WARNINGS, LED HIM TO THE CONCLUSION THAT THE ARBITRATION OUGHT NOT TO BE PROCEEDED WITH AND THAT THE NEGOTIATED SETTLEMENT SHOULD BE ACCEPTED.

14. THE UNION COMMUNICATED ITS ACCEPTANCE OF THE SETTLEMENT TO THE COMPANY ON MAY 5, 1971. THE COMPLAINANT, HOWEVER, DID NOT RETURN

TO WORK. AROUND JUNE 1ST, 1971, BROOKS TESTIFIED, THE COMPANY ADVISED THE UNION THAT VAN DER WOLF HAD BEEN TOLD TO COME IN BUT HAD NOT DONE SO AND THAT THE COMPANY FELT IT HAD LIVED UP TO ITS OBLIGATIONS UNDER THE AGREEMENT AND THAT VAN DER WOLF WOULD BE DISCHARGED. BROOKS PERSUADED THE COMPANY NOT TO DISCHARGE VAN DER WOLF. HE GOT IN TOUCH WITH VAN DER WOLF, EXPLAINED THE SETTLEMENT AND TOLD HER OR HER HUSBAND, THAT SHE SHOULD GO BACK TO WORK. THIS WAS AGREED UPON. VAN DER WOLF RETURNED TO WORK ON JUNE 14, 1971, WORKED FOR ONE SHIFT AND HAS SINCE FAILED TO RETURN TO WORK.

15. IT GOES WITHOUT SAYING THAT THE COMPLAINANT IS DISSATISFIED WITH THE MANNER IN WHICH THE UNION DEALT WITH HER CASE. A CONSIDERABLE PART OF HER DISSATISFACTION ARISES FROM THE FACT THAT SHE UNDERTOOK BROOKS' ACTIONS WERE BASED UPON PRODUCTION RECORDS WHICH SHE SOUGHT BUT DID NOT OBTAIN. TIMLECK, IN HIS EVIDENCE, SAID THAT DURING THE COURSE OF INVESTIGATING A COMPLAINT OF VAN DER WOLF FOLLOWING ONE OF THREE WARNINGS SHE HAD RECEIVED, HE HAD SEEN THE FOREMAN'S PRODUCTION SHEETS AND THAT THESE INDICATED THE COMPLAINANT WAS BELOW THE AVERAGE PRODUCTION. THESE WERE COMPANY RECORDS AND WERE NOT, OF COURSE, UNION RECORDS. IT WOULD APPEAR THAT ALTHOUGH THE UNION, THROUGH TIMLECK, SAW THIS PRODUCTION RECORD, THE COMPLAINANT WAS NOT GIVEN AN OPPORTUNITY TO EXAMINE IT. THE POINT IN THESE PROCEEDINGS, HOWEVER, IS THAT HER REPRESENTATIVE, THE UNION, WAS AWARE OF THIS WHILE DEALING WITH HER CASE.

16. IN AN INQUIRY UNDER SECTION 60, THE BOARD IS NOT PRIMARILY ENGAGED IN A CONSIDERATION OF THE MERITS OF THE COMPLAINANT'S CASE AS BETWEEN THE COMPLAINANT AND THE COMPANY. THE DUTY OF THE BOARD UNDER THE SECTION IS TO CARRY OUT AN EXAMINATION OF THE CONDUCT OF THE UNION THROUGHOUT THE MATTER IN ORDER TO ASCERTAIN WHETHER IT HAS ACTED IN A MANNER THAT IS ARBITRARY, DISCRIMINATORY OR IN BAD FAITH IN ITS REPRESENTATION OF THE COMPLAINANT. THE BOARD IS, THEREFORE, CONCERNED WITH THE QUESTION AS TO WHETHER THE DECISION OF THE UNION WAS MADE IN GOOD FAITH AND NOT WITH THE QUESTION AS TO WHETHER THE BOARD WOULD HAVE REACHED THE SAME OR SOME OTHER DECISION ON THE MERITS OF THE ORIGINAL DISPUTE BETWEEN THE COMPLAINANT AND THE COMPANY.

17. ON THE BASIS OF ALL OF THE EVIDENCE, WE FIND THAT THE UNION IN ITS REPRESENTATION OF MRS. VAN DER WOLF DID NOT ACT IN A MANNER THAT WAS ARBITRARY, DISCRIMINATORY OR IN BAD FAITH. IN THE AFFIRMATIVE, WE FIND THAT THE UNION ACTED IN GOOD FAITH THROUGHOUT BOTH IN DEALING WITH MRS. VAN DER WOLF'S COMPLAINT AND IN REACHING THE SETTLEMENT WHICH IT DID WITH THE COMPANY.

18. THE COMPLAINT IS ACCORDINGLY DISMISSED.

1355-71-R: CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) V. 400 UNIVERSITY AVENUE PROSPECT COMPANY (RESPONDENT).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS A. MAIN AND J.E.C. ROBINSON, Q.C.

APPEARANCES AT THE HEARING: V. McMANUS AND R. GILBERT FOR THE APPLICANT, B. W. BINNING, S. BERNARDO AND E. FOX FOR THE RESPONDENT.

DECISION OF THE BOARD: JANUARY 28, 1972.

1. THE NAME "400 UNIVERSITY PROSPECT COMPANY" APPEARING IN THE STYLE OF CAUSE OF THIS APPLICATION AS THE NAME OF THE RESPONDENT IS AMENDED TO READ: "400 UNIVERSITY AVENUE PROSPECT COMPANY".
2. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(N) OF THE LABOUR RELATIONS ACT.
3. THE APPLICANT IS APPLYING FOR CERTIFICATION AS BARGAINING AGENT FOR ALL EMPLOYEES OF THE RESPONDENT AT 400 UNIVERSITY AVENUE, SAVE AND EXCEPT SUPERINTENDENT, PERSONS ABOVE THE RANK OF SUPERINTENDENT AND SECURITY GUARDS. MOST OF THE PERSONS IN THE ABOVE UNIT ARE CLASSIFIED BY THE RESPONDENT AS CLEANERS.
4. COUNSEL FOR THE RESPONDENT SUBMITS THAT THE APPLICANT DOES NOT HAVE AS ONE OF ITS PURPOSES THE REGULATION OF RELATIONS BETWEEN THE TYPE OF EMPLOYEE FOR WHICH IT IS SEEKING CERTIFICATION, NAMELY CLEANERS, AND THAT ACCORDINGLY THE APPLICATION SHOULD BE DISMISSED.
5. ARTICLE III OF THE CONSTITUTION OF THE APPLICANT TITLED "JURISDICTION" READS IN PART AS FOLLOWS:

SEC. (1) THE CRAFT JURISDICTION OF THE UNION SHALL INCLUDE AND EXTEND TO ALL PERSONS AND THEIR ASSISTANTS ENGAGED IN THE SUPERVISION, CONTROL, OPERATION AND MAINTENANCE OF PROSSURE VESSELS AND, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, THE SAME SHALL INCLUDE ALL BOILERS, STEAM GENERATORS, ENGINES, TURBINES, MOTORS, INTERNAL COMBUSTION ENGINES, PUMPS, AIR OR GAS COMPRESSORS, GENERATORS, ICE AND REFRIGERATION MACHINES, AIR CONDITIONING UNITS AND PLANTS AND ALL APPURTENANCES CONNECTED WITH AND USED IN CONVENTIONAL AND NUCLEAR POWER PLANT OPERATIONS IN ALL COMMERCIAL, INDUSTRIAL, MINING AND INSTITUTIONAL ACTIVITY.

SEC. (2) THE JURISDICTION OF THE UNION SHALL FURTHER, WHEN DEEMED APPROPRIATE BY THE GENERAL EXECUTIVE BOARD, INCLUDE AND EXTEND TO UNITS OF EMPLOYEES COMPRISING PERSONS OTHER THAN THOSE ENGAGED IN THE WORK DESCRIBED IN SUBSECTION (1) HEREOF AND IF DEEMED DESIRABLE, SUCH PERSONS AND SUCH UNITS MAY BE ORGANIZED AND ESTABLISHED AS SEPARATE LOCAL UNIONS OR MAY BE INCLUDED IN EXISTING LOCAL UNIONS; PROVIDED HOWEVER THAT THE CRAFT STATUS OF THE LOCAL UNION AND ITS MEMBERSHIP SHALL BE PRESERVED.

6. THE REPRESENTATIVE OF THE APPLICANT ADVISED THE BOARD THAT THE GENERAL EXECUTIVE BOARD EXTENDED THE JURISDICTION OF THE APPLICANT PURSUANT TO SECTION (2) OF ARTICLE III OF ITS CONSTITUTION TO INCLUDE THE PERSONS FOR WHOM THE APPLICANT IS SEEKING CERTIFICATION. NO EVIDENCE OF THIS FACT, HOWEVER, WAS FILED WITH THE BOARD ALTHOUGH THE APPLICANT WAS AFFORDED AN OPPORTUNITY TO DO SO. THE REPRESENTATION OF THE APPLICANT SUBMITTED THAT NOTWITHSTANDING THE ALLEGED EXTENSION OF THE JURISDICTION OF THE APPLICANT ENACTED BY THE GENERAL EXECUTIVE BOARD, THE APPLICANT HAS A HISTORY OF TAKING PERSONS IN THE JOB CLASSIFICATIONS COVERED BY THE INSTANT APPLICATION INTO MEMBERSHIP AND REFERRED THE BOARD TO SPECIFIC APPLICATIONS IN WHICH THE BOARD HAS CERTIFIED THE APPLICANT FOR THE SAME TYPE OF EMPLOYEES FOR WHICH IT IS SEEKING CERTIFICATION IN THE INSTANT APPLICATION (SEE THE FAIRVIEW CORPORATION LIMITED CASE (NOVEMBER 20, 1968) BOARD FILE NO. 15267-68-R; A. E. LE PAGE LIMITED CASE (OCTOBER 22, 1969) BOARD FILE NO. 16731-69-R); LIBERTY BUILDING LIMITED CASE (OCTOBER 5, 1970) BOARD FILE NO. 18403-70-R). IN ALL OF THE ABOVE CITED CASES THE BOARD CERTIFIED THE APPLICANT FOR PERSONS IN THE OCCUPATIONAL CLASSIFICATIONS OF MAINTENANCE MEN AND MAINTENANCE CLEANERS.

7. THE RELEVANT SECTIONS OF THE LABOUR RELATIONS ACT DEALING WITH MEMBERSHIP IN A TRADE UNION ARE SECTION 1(1)(J) AND SECTION 92(4) WHICH READ:

SECTION 1(1)(J)

"MEMBER", WHEN USED WITH REFERENCE TO A TRADE UNION, INCLUDES A PERSON WHO,

- (i) HAS APPLIED FOR MEMBERSHIP IN THE TRADE UNION, AND
- (ii) HAS PAID TO THE TRADE UNION ON HIS OWN BEHALF AN AMOUNT OF AT LEAST \$1 IN RESPECT OF INITIATION FEES OR MONTHLY DUES OF THE TRADE UNION,

AND "MEMBERSHIP" HAS A CORRESPONDING MEANING;

SECTION 92(4)

WHERE THE BOARD IS SATISFIED THAT A TRADE UNION HAS AN ESTABLISHED PRACTICE OF ADMITTING PERSONS TO MEMBERSHIP WITHOUT REGARD TO THE ELIGIBILITY REQUIREMENTS OF ITS CHARTER, CONSTITUTION OR BY-LAWS, THE BOARD, IN DETERMINING WHETHER A PERSON IS A MEMBER OF A TRADE UNION, NEED NOT HAVE REGARD FOR SUCH ELIGIBILITY REQUIREMENTS.

8. THE ABOVE QUOTED SECTIONS WERE INCORPORATED INTO THE ACT BY THE LABOUR RELATIONS AMENDMENT ACT 1970 AS A RESULT OF A DECISION HANDED DOWN BY THE SUPREME COURT OF CANADA IN THE METROPOLITAN LIFE INSURANCE CASE 11 D.L.R. (3D) 336. IN THAT DECISION THE COURT QUESTIONED THE JURISDICTION OF THE BOARD TO FOLLOW ITS LONG STANDING PRACTICE OF TAKING INTO ACCOUNT THE ESTABLISHED PRACTICE OF A TRADE UNION OF TAKING PERSONS INTO MEMBERSHIP IN DETERMINING THE EFFECT TO BE GIVEN TO THE ELIGIBILITY OF MEMBERSHIP REQUIREMENTS AS CONTAINED IN THE UNION'S CHARTER, CONSTITUTION OR BY-LAWS. THE OBJECT OF THE AMENDMENTS, IN EFFECT, WAS TO CODIFY THE PAST PRACTICE OF THE BOARD. MORE PARTICULARLY, THE PURPOSE OF THE AMENDMENTS WAS TO EMPOWER THE BOARD WHEN IT IS REQUIRED TO "ASCERTAIN THE NUMBER OF EMPLOYEES IN THE BARGAINING UNIT...WHO WERE MEMBERS OF THE TRADE UNION..." FOR PURPOSES OF SECTION 7(1) OF THE ACT, TO TAKE INTO ACCOUNT IN DETERMINING WHETHER A PERSON IS A MEMBER OF A TRADE UNION THE ESTABLISHED PRACTICE OF THE TRADE UNION IN ADMITTING MEMBERS WITHOUT REGARD TO THE ELIGIBILITY REQUIREMENTS OF ITS CHARTER, CONSTITUTION OR BY-LAWS. SECTION 92(4) SPECIFICALLY PROVIDES THAT IN MAKING THIS DETERMINATION THE BOARD "NEED NOT HAVE REGARD FOR SUCH ELIGIBILITY REQUIREMENTS". SINCE THE ENACTMENT OF THE SAID AMENDMENTS, WHICH CAME INTO EFFECT ON MARCH 2, 1970, THE BOARD HAS HAD OCCASION IN A NUMBER OF CASES TO INTERPRET THE LANGUAGE OF SECTION 92(4) OF THE ACT.

9. IN THE CANADYLET CLOSURES DIVISION OF THE INTERNATIONAL SILVER COMPANY OF CANADA LIMITED CASE OLRB M.R. JULY 1970 P. 424, THE BOARD ENTERTAINED THE REPRESENTATIONS OF THE PARTIES WITH RESPECT TO THE LABOUR RELATIONS AMENDMENT ACT 1970. COUNSEL FOR THE RESPONDENT CONCEDED THAT THE APPLICANT HAD ADDUCED EVIDENCE THAT IT HAD AN ESTABLISHED PRACTICE OF ADMITTING THE PERSONS FOR WHOM IT WAS SEEKING CERTIFICATION INTO MEMBERSHIP. COUNSEL FOR THE RESPONDENT SUBMITTED, HOWEVER, THAT WHILE THE APPLICANT MAY HAVE SATISFIED THE REQUIREMENTS OF SECTION 77(4) (NOW SECTION 92(4)) WITH REGARD TO ELIGIBILITY FOR MEMBERSHIP, THE APPLICANT HAD NOT FULFILLED THE PROCEDURAL REQUIREMENTS OF ITS CONSTITUTION. IN DEALING WITH THIS SUBMISSION, AFTER QUOTING SECTION 1(1)(GA) (NOW SECTION 1(1)(J)) THE BOARD STATED AT P. 426:

THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT MEETS THE ABOVE REQUIREMENTS OF THE ACT. ACCORDINGLY, IT IS NOT NECESSARY FOR THE BOARD TO MAKE ANY INQUIRY WITH RESPECT TO THE PROCEDURAL REQUIREMENTS OF THE APPLICANT'S CONSTITUTION AS IT RELATES TO MEMBERSHIP.

10. IN GOODFELLOW ENTERPRISES (SARNIA) LTD. CASE OLRB M.R. SEPTEMBER 1970 P. 658, THE BOARD ISSUED A CERTIFICATE TO THE APPLICANT TRADE UNION. BOARD MEMBER H. F. IRWIN IN A CONCURRING DECISION RECORDED THE BASIS OF HIS ACCEPTANCE OF THE EVIDENCE OF MEMBERSHIP AS FILED BY THE APPLICANT. AFTER QUOTING SECTION 77(4) (NOW SECTION 92(4)), BOARD MEMBER IRWIN STATED AT P. 659:

DURING THE COURSE OF THE HEARING, I ASKED MR. MCKINNON, WHO REPRESENTED THE APPLICANT UNION, IF, ON THE BASIS OF HIS OWN KNOWLEDGE, HE COULD ASSURE THE BOARD THAT THE APPLICANT UNION HAS AN ESTABLISHED PRACTICE OF ADMITTING TO FULL MEMBERSHIP ALL THE CLASSIFICATIONS OF EMPLOYEES WHO ARE PRESENTLY IN THE BARGAINING UNIT OR WHO HEREAFTER MAY BE SO EMPLOYED. HE ASSURED THE BOARD THAT THIS WAS THE CASE.

ON THE BASIS OF THE ABOVE ASSURANCE BY MR. MCKINNON, I ACCEPT THE EVIDENCE OF MEMBERSHIP IN ACCORDANCE WITH THE PROVISIONS OF SECTION 77(4) OF THE LABOUR RELATIONS ACT.

11. THE BOARD MADE THE FOLLOWING STATEMENT IN THE ZELLER'S LIMITED CASE OLRB M.R. NOVEMBER 1970 P. 809 WITH REGARD TO THE APPLICATION OF SECTION 92(4) (FORMERLY SECTION 77(4)) OF THE ACT AT P. 814:

THE EVIDENCE OF MEMBERSHIP FILED BY THE APPLICANT IN THIS CASE SATISFIED THE REQUIREMENTS OF SECTION 1(1)(GA) OF THE ACT. WHERE, AS IN THIS CASE, PERSONS ARE CLAIMED BY THE APPLICANT AS MEMBERS AND THE EVIDENCE OF MEMBERSHIP SATISFIES THE REQUIREMENTS OF THE ACT, THE BOARD ASSUMES THAT THE UNION HAS NOT VIOLATED ITS OWN CHARTER, CONSTITUTION OR BY-LAWS AND THEREFORE THE BOARD ASSUMES THAT THE UNION HAS THE RIGHT TO ACCEPT AND HAS ACCEPTED SUCH PERSONS INTO MEMBERSHIP UNDER THE PROVISIONS OF ITS CHARTER, CONSTITUTION OR BY-LAWS. OF COURSE, THIS ASSUMPTION IS REBUTTABLE. IF THERE IS A CHALLENGE TO THE

APPLICANT'S JURISDICTION TO TAKE SUCH PERSONS INTO MEMBERSHIP AND SUCH CHALLENGE IS SUPPORTED BY EVIDENCE THAT CASTS SERIOUS DOUBT ON THE APPLICANT'S RIGHT UNDER ITS CHARTER, CONSTITUTION OR BY-LAWS TO TAKE SUCH PERSONS INTO MEMBERSHIP, THE BOARD, PURSUANT TO THE PROVISIONS OF SECTION 77(4) OF THE ACT, WILL REQUIRE THE UNION TO PROVE THAT IT HAS AN ESTABLISHED PRACTICE OF ADMITTING PERSONS INTO MEMBERSHIP WITHOUT REGARD TO THE ELIGIBILITY REQUIREMENTS OF ITS CHARTER, CONSTITUTION OR BY-LAWS.

12. IN THE JOURNAL PUBLISHING COMPANY OF OTTAWA, LIMITED CASE, THE BOARD ORIGINALLY DISMISSED AN APPLICATION FOR CERTIFICATION FOR THE REASON THAT THE RESTRICTIVE CITIZENSHIP REQUIREMENTS CONTAINED IN THE CONSTITUTION OF THE APPLICANT CONTRAVENED SECTION 12 OF THE ACT (SEE OLRB M.R. AUGUST 1970 P. 576). THE APPLICANT SUBSEQUENTLY MADE A SECOND APPLICATION FOR THE SAME UNIT OF EMPLOYEES AND AT THE HEARING OF THAT APPLICATION SOUGHT TO PERSUADE THE BOARD TO EXERCISE ITS DISCRETION UNDER SECTION 77(4) (NOW SECTION 92(4)) OF THE ACT. THE BOARD IN ITS DECISION SET OUT THE CRITERIA THAT A TRADE UNION MUST MEET IN ORDER TO SHOW "AN ESTABLISHED PRACTICE" AS THOSE WORDS ARE USED IN THE SAID SECTION. SEE OLRB M.R. DECEMBER 1970 P. 925 AT P. 930:

IN ORDER THAT AN ESTABLISHED PRACTICE BE PROVED WITHIN THE MEANING OF SECTION 77(4) OF THE ACT, IT IS NECESSARY THAT THE UNION PROVE THAT PERSONS WHO WERE NOT CANADIAN CITIZENS AND WHO HAVE NOT DECLARED THEIR INTENTION OF BECOMING CANADIAN CITIZENS HAD IN FACT BEEN ADMITTED TO MEMBERSHIP NOTWITHSTANDING THE ELIGIBILITY REQUIREMENTS OF THE CHARTER, CONSTITUTION OR BY-LAWS IN THAT REGARD. IF THE UNION HAD KNOWINGLY ADMITTED SUCH NON-CITIZENS INTO MEMBERSHIP, THE BOARD WOULD THEN BE IN A POSITION TO FIND THAT IT WAS SATISFIED THAT THE UNION HAD AN ESTABLISHED PRACTICE OF ADMITTING PERSONS TO MEMBERSHIP WITHOUT REGARD TO THE ELIGIBILITY REQUIREMENTS OF ITS CHARTER, CONSTITUTION OR BY-LAWS, AS CONTEMPLATED BY SECTION 77(4). THE INTENTION TO DO SO IS NOT SUFFICIENT. THE ACTUAL PRACTICE MUST BE ESTABLISHED.

13. IN THE INSTANT CASE, THE BOARD IS SATISFIED THAT THE APPLICANT HAS AN ESTABLISHED PRACTICE WITHIN THE MEANING OF SECTION 92(4)

OF THE ACT OF ADMITTING INTO MEMBERSHIP CLASSIFICATIONS OF PERSONS FOR WHOM THE APPLICANT IS SEEKING CERTIFICATION.

14. HAVING REGARD TO THE AGREEMENT OF THE PARTIES, THE BOARD FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT 400 UNIVERSITY AVENUE IN TORONTO, SAVE AND EXCEPT THE SUPERINTENDENT AND PERSONS ABOVE THE RANK OF SUPERINTENDENT AND SECURITY GUARDS, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

15. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN SIXTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON DECEMBER 16, 1971, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 92(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSES OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

16. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

1512-71-R: GRAHAM TRANSPORT LIMITED (APPLICANT) V. GENERAL TRUCK DRIVERS UNION, LOCAL 938 (RESPONDENT).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND E. BOYER.

DECISION OF THE BOARD: JANUARY 31, 1972.

1. THE APPLICANT APPLIED ON JANUARY 28, 1972 PURSUANT TO THE PROVISIONS OF SECTION 49 OF THE LABOUR RELATIONS ACT FOR A DECLARATION TERMINATING THE BARGAINING RIGHTS OF THE RESPONDENT WITH RESPECT TO THAT UNIT OF EMPLOYEES OF THE APPLICANT REPRESENTED BY THE RESPONDENT. IT WOULD APPEAR THAT THE RESPONDENT AND THE APPLICANT WERE PARTIES TO A COLLECTIVE AGREEMENT WHICH WAS IN EFFECT FROM JULY 1, 1970 UNTIL JUNE 30, 1972. SECTION 49 OF THE ACT PROVIDES IN PART THAT:

49(2) ANY OF THE EMPLOYEES IN THE BARGAINING UNIT DEFINED IN A COLLECTION AGREEMENT MAY, SUBJECT TO SECTION 53, APPLY TO THE BOARD FOR A DECLARATION THAT THE TRADE UNION NO LONGER REPRESENTS THE EMPLOYEES IN THE BARGAINING UNIT,

(A) IN THE CASE OF A COLLECTIVE AGREEMENT FOR A TERM OF NOT MORE THAN THREE YEARS, ONLY AFTER THE COMMENCEMENT OF THE LAST TWO MONTHS OF ITS OPERATION;

2. IT APPEARS TO THE BOARD FROM THE FACTS SET OUT ABOVE THAT THE TIME LIMIT REFERRED TO IN SECTION 49(2)(A) OF THE ACT HAD NOT COMMENCED AT THE TIME THIS APPLICATION WAS MADE.

3. IF THE BOARD IS CORRECT IN ITS ASSUMPTION THAT THE ABOVE ARE THE FACTS OF THIS CASE, IT WOULD FOLLOW, PURSUANT TO THE PROVISIONS OF SECTION 49(2)(A), THAT THIS APPLICATION IS UNTIMELY.

4. THE BOARD ACCORDINGLY DIRECTS THE APPLICANT TO ADVISE THE BOARD IN WRITING ON OR BEFORE THE 8TH DAY OF FEBRUARY, 1972 WHETHER, IN ITS OPINION, THE BOARD IS IN ERROR IN ASSUMING THAT THE FACTS OF THIS CASE ARE SE SET OUT ABOVE. IF THE APPLICANT IS OF OPINION THAT THE BOARD IS IN ERROR, THE APPLICANT WILL INCLUDE IN ITS ADVICE TO THE BOARD A SUMMARY OF THE FACTS IN SUPPORT OF ITS OPINION.

5. THIS APPLICATION WILL NOT BE PROCESSED FURTHER PENDING THE RECEIPT OF SUCH ADVICE AND SUMMARY OF FACTS FROM THE APPLICANT.

6. IF THE BOARD DOES NOT RECEIVE SUCH ADVICE SUPPORTED BY A SUMMARY OF FACTS AS HEREIN DIRECTED, THIS APPLICATION WILL BE DISPOSED OF PURSUANT TO THE PROVISIONS OF SECTION 46 OF THE BOARD'S RULES OF PROCEDURE WITHOUT FURTHER NOTICE TO THE APPLICANT.

7. APART FROM ANY OTHER CONSIDERATION, AN APPLICATION UNDER SECTION 49 OF THE ACT CAN ONLY BE MADE BY "ANY OF THE EMPLOYEES IN THE BARGAINING UNIT". SINCE THE APPLICANT IN THIS CASE IS THE EMPLOYER, IT WOULD APPEAR THAT THE PROVISIONS OF SECTION 49 OF THE ACT DO NOT APPLY OF IT.

598-71-R: CANADIAN MERCHANDISING EMPLOYEES' UNION (APPLICANT) V. STEINBERG'S LIMITED (RESPONDENT) V. RETAIL AND FOOD EMPLOYEES LOCAL UNION 175, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (INTERVENER #1) V. UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 93 (INTERVENER #2) V. RETAIL CLERKS INTERNATIONAL ASSOCIATION (INTERVENER #3) V. RETAIL CLERKS UNION, LOCAL NO. 486 CHARTERED BY THE RETAIL CLERKS INTERNATIONAL ASSOCIATION (INTERVENER #4).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS O. HODGES AND W. H. WIGHTMAN.

APPEARANCES AT THE HEARING: D. J. POWER, T. REES, K. POWELL AND J. GARDNER FOR THE APPLICANT; C. M. McKEOWN FOR THE RESPONDENT; L. V. PATHE FOR INTERVENER #1; NO ONE FOR INTERVENER #2; I. SCOTT, B. BAILY, D. WADE AND R. LEWIS FOR INTERVENERS #3 AND #4.

DECISION OF THE BOARD:

JANUARY 31, 1972.

1. THE NAME "STEINBERG'S LIMITED (MIRACLE MART DIVISION)" APPEARING IN THE STYLE OF CAUSE OF THIS APPLICATION AS THE NAME OF THE RESPONDENT IS AMENDED TO READ: "STEINBERG'S LIMITED".
2. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(N) OF THE LABOUR RELATIONS ACT.
3. THE PARTIES AGREED THAT THE EVIDENCE ADDUCED IN THE REFERENCE FROM THE MINISTER IN THE STEINBERG'S LIMITED (MIRACLE MART DIVISION) CASE, BOARD FILE NO. 776-71-M, SHOULD BE APPLIED TO THE INSTANT APPLICATION. ACCORDINGLY, BASED ON THE EVIDENCE ADDUCED, WE ADOPT THE FINDINGS MADE IN THAT CASE WHICH ARE SET FORTH IN THE BOARD'S DECISION OF JANUARY 4, 1972.
4. THE MINISTER, IN HIS REFERENCE, REFERRED TO THE BOARD THE QUESTION AS TO WHETHER HE HAD THE AUTHORITY TO APPOINT A CONCILIATION OFFICER ON JUNE 2, 1971. THE BOARD'S ANSWER TO THAT QUESTION, WHICH IS CONTAINED IN THE ABOVE DECISION OF JANUARY 4, 1972, WAS THAT THE MINISTER, FOR THE REASONS GIVEN, WAS WITHOUT AUTHORITY TO APPOINT A CONCILIATION OFFICER. BY LETTER DATED JANUARY 10, 1972 THE PARTIES WERE ADVISED THAT THE CONCILIATION SERVICES GRANTED BY THE MINISTER ON JUNE 2, 1971 WITH RESPECT TO THE EMPLOYEES OF THE RESPONDENT (HEREINAFTER REFERRED TO AS STEINBERG'S) FOR WHOM THE APPLICANT IS SEEKING CERTIFICATION WERE NO LONGER AVAILABLE. THE BOARD THEREFORE FINDS THAT THE INSTANT APPLICATION IS NOT UNTIMELY BY REASON OF THE APPOINTMENT OF A CONCILIATION OFFICER.
5. IN THE STEINBERG'S REFERENCE FROM THE MINISTER (SUPRA) THE BOARD FOUND THAT ON APRIL 1, 1968 LOCAL 486W MERGED WITH LOCAL 486 AND THAT ON THE SAME DAY A NEW CHARTER WAS ISSUED IN THE NAME OF COMMERCE EMPLOYEES' UNION LOCAL 500 (HEREINAFTER REFERRED TO AS LOCAL 500). THE BOARD FURTHER FOUND THAT LOCAL 500, WHICH WAS AN ENTIRELY NEW ENTITY SUCCEEDED TO THE JURISDICTION FORMERLY HELD BY THE MERGED LOCALS 486W AND 486. THE BOARD FURTHER FOUND THAT THE GEOGRAPHIC JURISDICTION OF THE NEW LOCAL 500 ENCOMPASSED MONTREAL AND THE COUNTIES OF RENFREW, FRONTENAC, LANARK, LEEDS, CARLETON, GRENVILLE, RUSSELL, DUNDAS, STORMONT, PRESCOTT AND GLENGARRY IN EASTERN ONTARIO AND THAT FROM APRIL 1, 1968 UNTIL DECEMBER 1, 1970 LOCAL 500 ACTIVELY EXERCISED ITS JURISDICTION OVER THIS AREA. THE BOARD FURTHER FOUND THAT WHEN LOCAL 486W MERGED WITH LOCAL 486 ON APRIL 1, 1968, BOTH LOCALS SURRENDERED THEIR CHARTERS AND WENT OUT OF EXISTENCE.
6. THE EMPLOYEES OF STEINBERG'S IN EASTERN ONTARIO, INCLUDING OTTAWA, WHO FROM SOME TIME IN 1966 UNTIL APRIL 1, 1968 HAD BEEN REPRESENTED BY LOCAL 486, AFTER THAT DATE WERE REPRESENTED BY LOCAL 500.

THE UNION DUES DEDUCTED BY STEINBERG'S FOR THESE EMPLOYEES AFTER APRIL 1, 1968 WERE PAID TO LOCAL 500. ON JULY 19, 1968, THE RETAIL CLERKS INTERNATIONAL ASSOCIATION (HEREINAFTER REFERRED TO AS THE ASSOCIATION) PLACED LOCAL 500 IN TRUSTEESHIP. ON NOVEMBER 10, 1969, THE TRUSTEES OF LOCAL 500 AND RESPONSIBLE OFFICERS OF STEINBERG'S ENTERED INTO A COLLECTIVE AGREEMENT, WITH EXPIRY DATE OF APRIL 6, 1970. LOCAL 486 AND STEINBERG'S WERE NAMED AS PARTIES TO THE SAID AGREEMENT. THE BOARD IN ITS DECISION OF JANUARY 4, 1972 IN THE STEINBERG'S REFERENCE FROM THE MINISTER FOUND THAT THE AGREEMENT OF NOVEMBER 10, 1969 WAS NOT A COLLECTIVE AGREEMENT SINCE AT THE TIME THE AGREEMENT WAS ENTERED INTO LOCAL 486 WAS A NON-EXISTENT ENTITY.

7. IN RESPONSE TO AN APPLICATION MADE BY MEMBERS OF LOCAL 500 IN EASTERN ONTARIO, THE ASSOCIATION ISSUED A CHARTER ON NOVEMBER 2, 1970 IN THE NAME OF RETAIL CLERKS UNION, LOCAL NO. 486. THE GEOGRAPHIC JURISDICTION OF THE NEW LOCAL AS SET OUT IN THE CHARTER COVERS OTTAWA, THE COUNTIES OF RENFREW, FRONTENAC, LANARK, LEEDS, GRENVILLE, CARLETON, DUNDAS, RUSSELL, STORMONT, PRESCOTT, GLENGARRY, HASTINGS, PRINCE EDWARD, LENNOX AND ADDINGTON IN THE PROVINCE OF ONTARIO AND THE COUNTIES OF HULL AND GATINEAU IN THE PROVINCE OF QUEBEC. LOCAL 500 RELINQUISHED ALL CLAIMS TO JURISDICTION OVER THIS AREA. A MEETING OF THE NEWLY CHARTERED LOCAL 486 WAS HELD IN OTTAWA ON DECEMBER 1, 1970 WHICH WAS ATTENDED BY FROM 60 TO 90 EMPLOYEES FALLING WITHIN THE JURISDICTION OF THE NEW LOCAL. BY RESOLUTION THE CHARTER FOR THE NEW LOCAL 486 WAS ADOPTED AND PRO TEM OFFICERS WERE NAMED. IMMEDIATELY AFTER THE RESOLUTION WAS ADOPTED, RICHARD LEWIS, AN INTERNATIONAL REPRESENTATIVE OF THE ASSOCIATION WHO WAS IN ATTENDANCE AT THE MEETING, READ TO THOSE PRESENT A LETTER FROM THE INTERNATIONAL PRESIDENT OF THE ASSOCIATION DATED NOVEMBER 25, 1970 PLACING THE NEW LOCAL 486 UNDER TRUSTEESHIP. THE TRUSTEESHIP REMAINED IN EFFECT UNTIL JULY 1, 1971 ON WHICH DATE IT WAS TERMINATED. OFFICERS WERE ELECTED AND BY-LAWS ADOPTED FOR THE NEW LOCAL 486, ALL IN ACCORDANCE WITH THE CONSTITUTION OF THE ASSOCIATION. THE LOCAL CHARTERED BY THE ASSOCIATION ON NOVEMBER 2, 1970 WAS GIVEN THE SAME NAME AND NUMBER AS THE LOCAL WHICH SURRENDERED ITS CHARTER AND WENT OUT OF EXISTENCE ON APRIL 1, 1968. THERE IS NO QUESTION, HOWEVER, THAT THE NEW LOCAL 486 IS AN ENTIRELY DIFFERENT ENTITY FROM THE FORMER LOCAL 486.

8. THE BOARD DOES NOT CONDONE THE ASSOCIATION'S CONDUCT IN ENTERING INTO A COLLECTIVE AGREEMENT WITH STEINBERG'S ON NOVEMBER 10, 1969 NAMING THE NON-EXISTENT LOCAL 486 AS A PARTY WHEN LOCAL 500 HELD THE BARGAINING RIGHTS FOR THE EMPLOYEES CONCERNED. WE ARE NOT PREPARED, HOWEVER, TO FIND THAT THE BARGAINING RIGHTS HELD BY LOCAL 500 WERE AFFECTED BY REASON OF THIS ACTION ON THE PART OF THE ASSOCIATION. WE FIND RATHER THAT UNTIL DECEMBER 1, 1970 LOCAL 500 CONTINUED TO HOLD THE BARGAINING RIGHTS FOR THOSE EMPLOYEES OF STEINBERG'S WHICH THE OLD LOCAL 486 HAD HELD PRIOR TO ITS GOING OUT OF EXISTENCE ON APRIL 1, 1968,

BY REASON OF LOCAL 500 BEING THE SUCCESSOR TRADE UNION TO LOCAL 486. WE FURTHER FIND THAT THE NEW LOCAL 486 IS A TRADE UNION WITHIN THE MEANING OF THE ACT AND THAT ON DECEMBER 1, 1970, BY REASON OF A TRANSFER OF JURISDICTION, IT SUCCEEDED TO THE BARGAINING RIGHTS FOR THE EMPLOYEES OF STEINBERG'S HELD BY LOCAL 500 IN EASTERN ONTARIO AND THAT THE LATTER TRADE UNION SURRENDERED ITS JURISDICTION OVER THE SAID GEOGRAPHIC AREA. WE FIND, MOREOVER, THAT THE NEW LOCAL 486 HAS CONTINUED TO HOLD THESE BARGAINING RIGHTS TO THE PRESENT TIME.

9. THE APPLICANT IS APPLYING FOR CERTIFICATION FOR A UNIT COMPOSED OF ALL EMPLOYEES, INCLUDING HOSTESSES, OF STEINBERG'S (MIRACLE MART DIVISION) IN THE COUNTIES OF RENFREW, LANARK, LEEDS, CARLETON, GRENVILLE, DUNDAS, STORMONT, RUSSELL, PRESCOTT AND GLENGARRY IN THE PROVINCE OF ONTARIO, SAVE AND EXCEPT GROUP MANAGERS, PERSONS ABOVE THE RANK OF GROUP MANAGER, SECURITY OFFICERS, SHOPPERS, GUARDS AND OFFICE STAFF.

10. THE ASSOCIATION WAS CERTIFIED BY THE BOARD ON NOVEMBER 1, 1966 FOR A BARGAINING UNIT COMPOSED OF THE EMPLOYEES OF STEINBERG'S IN ITS DEPARTMENT STORE DIVISION AT OTTAWA. AS OF THAT DATE STEINBERG'S ONLY HAD ONE DEPARTMENT STORE IN OTTAWA LOCATED AT 2160 CARLING AVENUE. SUBSEQUENTLY, STEINBERG'S OPENED A SECOND DEPARTMENT STORE LOCATED AT 1595 MERIVALE ROAD IN THE TOWNSHIP OF NEPEAN. AT SOME TIME SUBSEQUENT TO THE ISSUING OF THE BOARD'S CERTIFICATE, STEINBERG'S ENTERED INTO A COLLECTIVE AGREEMENT WITH THE OLD LOCAL 486 OF THE ASSOCIATION. THERE IS NO EVIDENCE BEFORE THE BOARD AS TO THE GEOGRAPHIC AREA COVERED BY THE SCOPE CLAUSE OF THAT AGREEMENT. IT APPEARS, HOWEVER, THAT IT COVERED THE EMPLOYEES OF STEINBERG'S IN THE ABOVE TWO DEPARTMENT STORES WHICH NOW FALL WITHIN THE GEOGRAPHIC AREA OF THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON. IT FURTHER APPEARS THAT THESE ARE THE ONLY TWO DEPARTMENTS STORES OPERATED BY STEINBERG'S IN EASTERN ONTARIO. THE RECOGNITION CLAUSE OF THE SECOND AGREEMENT TO WHICH LOCAL 486 AND STEINBERG'S WERE NAMED AS PARTIES DATED NOVEMBER 10, 1969 IS THE SAME AS THAT FOR WHICH THE APPLICANT IS SEEKING CERTIFICATION. THE BOARD, HOWEVER, HAS FOUND THAT THAT AGREEMENT IS NOT A COLLECTIVE AGREEMENT WITHIN THE MEANING OF THE ACT.

11. IN LIGHT OF THE FOREGOING CIRCUMSTANCES AND HAVING PARTICULAR REGARD TO THE FACT THAT THE ABOVE TWO DEPARTMENT STORES ARE THE ONLY ONES OPERATED BY STEINBERG'S (MIRACLE MART DIVISION) IN EASTERN ONTARIO, THE BOARD FINDS THAT ALL EMPLOYEES OF THE RESPONDENT IN ITS MIRACLE MART DIVISION IN THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON, SAVE AND EXCEPT GROUP MANAGERS, PERSONS ABOVE THE RANK OF GROUP MANAGER, SECURITY OFFICERS, SHOPPERS, GUARDS AND OFFICE STAFF, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING. THE BOARD FURTHER FINDS THAT THE NEW LOCAL 486 CURRENTLY IS THE BARGAINING AGENT FOR THE EMPLOYEES IN THE ABOVE DESCRIBED UNIT AND THAT IT WAS

THE BARGAINING AGENT FOR THOSE EMPLOYEES ON JUNE 17, 1971, THE DATE OF THE MAKING OF THE INSTANT APPLICATION.

12. BY LETTER DATED JANUARY 24, 1972, COUNSEL FOR INTERVENERS #3 AND #4 SUBMITTED THAT IN THE EVENT THE BOARD DEALT WITH THE QUESTION AS TO WHETHER THE INSTANT CASE IS A DISPLACEMENT APPLICATION AND PROPOSES AN ORDER AGAINST HIS CLIENTS OR ALTERS THE BARGAINING UNIT, A HEARING SHOULD BE HELD IN ORDER TO PERMIT THE PARTIES TO LEAD EVIDENCE IN ADDITION TO THE EVIDENCE THAT WAS BEFORE THE BOARD IN THE REFERENCE FROM THE MINISTER IN THE STEINBERG'S LIMITED (MIRACLE MART DIVISION) CASE, BOARD FILE NO. 776-71-M. ALL PARTIES TO THIS PROCEEDING WERE AFFORDED A FULL OPPORTUNITY TO ADDUCE EVIDENCE AND MAKE REPRESENTATION WITH RESPECT TO ALL OF THE ISSUES INVOLVED IN THE INSTANT APPLICATION. THE SUBMISSION OF COUNSEL ACCORDINGLY IS REJECTED.

13. WE WOULD MENTION THAT COUNSEL FOR STEINBERG'S SUBMITTED THAT HAVING REGARD TO THE PRINCIPLES LAID DOWN IN THE TRINIDAD LEASE-HOLDS (CANADA) LTD. CASE 52 CLLC ¶17,005, THE INSTANT APPLICATION IS UNTIMELY BY REASON OF THE DISMISSAL OF A PRIOR APPLICATION MADE BY THE APPLICANT. THE APPLICANT DID MAKE A PRIOR APPLICATION FOR CERTIFICATION ON FEBRUARY 7, 1971 FOR THE SAME UNIT OF EMPLOYEES OF STEINBERG'S WHO ARE THE SUBJECT OF THE INSTANT APPLICATION. THE BOARD FOR THE REASONS GIVEN IN ITS DECISION OF JUNE 14, 1971 DISMISSED THE PRIOR APPLICATION (SEE STEINBERG'S LIMITED CASE OLRB M.R. JUNE 1971 P. 329). HAVING REGARD TO THE SPECIAL CIRCUMSTANCES OF THE INSTANT CASE, NAMELY THAT THERE WAS AN ISSUE AS TO WHICH INCUMBENT TRADE UNION, IF ANY, HELD THE BARGAINING RIGHTS FOR THE EMPLOYEES FOR WHOM THE APPLICANT IS SEEKING CERTIFICATION, WE ARE SATISFIED THAT IN THE EXERCISE OF OUR DISCRETION UNDER SECTION 92(2)(1) OF THE ACT, THE BOARD SHOULD NOT DECLINE TO ENTERTAIN THE APPLICATION (SEE SEVEN-UP (ONTARIO) LIMITED CASE (DECEMBER 13, 1971) BOARD FILE NO. 995-71-R).

14. COUNSEL FOR THE RESPONDENT SUBMITS THAT IN THE EVENT THAT THE BOARD SHOULD DIRECT THE TAKING OF A REPRESENTATION VOTE, THERE SHOULD BE A "NO UNION" OPTION ON THE BALLOT. THE APPLICANT IN THE INSTANT CASE IS SEEKING TO DISPLACE THE NEW LOCAL 486 AS THE BARGAINING AGENT FOR THE EMPLOYEES OF STEINBERG'S FOR WHICH LOCAL 486 NOW HOLDS THE BARGAINING RIGHTS. IF THE BOARD WERE TO ACCEDE TO THE REQUEST OF COUNSEL FOR THE RESPONDENT AND PLACE A "NO UNION" OPTION ON THE BALLOT, IT COULD HAVE THE EFFECT OF TURNING A DISPLACEMENT APPLICATION INTO AN APPLICATION FOR TERMINATION OF BARGAINING RIGHTS. HAVING REGARD TO THE FACT THAT THERE ARE OTHER PROVISIONS UNDER THE ACT FOR THE MAKING OF AN APPLICATION TERMINATING BARGAINING RIGHTS, THE BOARD IS OF THE OPINION THAT THIS IS NOT A CIRCUMSTANCE, IN WHICH IT OUGHT TO EXERCISE ITS DISCRETION UNDER SECTION 92(6) OF THE ACT AND INCLUDE ON THE BALLOT A CHOICE INDICATING THAT THE EMPLOYEES DO

NOT WISH TO BE REPRESENTED BY A TRADE UNION. THE REQUEST OF COUNSEL FOR THE RESPONDENT ACCORDINGLY IS DENIED.

15. COUNSEL FOR THE APPLICANT CHALLENGED THE LIST OF EMPLOYEES FILED BY THE RESPONDENT. MR. H. C. DRAPER, EXAMINER, IS AUTHORIZED TO INQUIRE INTO AND REPORT TO THE BOARD ON THE LIST CONTAINING THE NAMES OF THE EMPLOYEES OF THE RESPONDENT FILED WITH THE BOARD IN CONNECTION WITH THIS APPLICATION.

CASE LISTINGS JANUARY 1972

	PAGE
1. CERTIFICATION	
(A) BARGAINING AGENTS CERTIFIED	1
(B) APPLICATIONS DISMISSED	13
(C) APPLICATIONS WITHDRAWN	17
2. APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS	18
3. APPLICATION FOR DECLARATION THAT STRIKE UNLAWFUL	20
4. APPLICATIONS FOR CONSENT TO PROSECUTE	20
5. APPLICATIONS FOR CONSENT TO PROSECUTE (HOSPITAL ARBITRATION ACT)	21
6. COMPLAINTS UNDER SECTION 79 (FORMERLY S. 65) (UNFAIR LABOUR PRACTICE)	21
7. APPLICATIONS UNDER SECTION 39 (FORMERLY S. 35 (A))	23
8. APPLICATIONS UNDER SECTION 55 (FORMERLY S. 47A)	24
9. REFERENCES TO BOARD PURSUANT TO SECTION 96 (FORMERLY S. 79A)	25
10. APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION	25

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

DURING JANUARY 1972

BARGAINING AGENTS CERTIFIED DURING JANUARY

NO VOTE CONDUCTED

97-70-R: INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL UNION 1687 (APPLICANT) v. EXCELLENCE ELECTRICAL CONSTRUCTION (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL ELECTRICIANS AND ELECTRICIANS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT WITHIN A RADIUS OF THIRTY-FIVE MILES FROM THE CITY OF SUDBURY FEDERAL BUILDING, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (23 EMPLOYEES IN THE UNIT).

(SEE DECISION [1972] OLRB REP. 44).

304-71-R: THE GENERAL CONTRACTORS' SECTION OF THE TORONTO CONSTRUCTION ASSOCIATION (APPLICANT) v. LOCAL 598 OF THE OPERATIVE PLASTERERS AND CEMENT MASONS INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA (RESPONDENT).

UNIT: "ALL EMPLOYERS OF EMPLOYEES ENGAGED IN CEMENT FINISHING WORK FOR WHOM THE RESPONDENT HAS BARGAINING RIGHTS IN METROPOLITAN TORONTO, THE COUNTIES OF YORK AND PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON, AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO IN THE INDUSTRIAL, COMMERCIAL AND INSTITUTIONAL SECTOR." (NO EMPLOYEES IN THE UNIT).

(SEE DECISION [1972] OLRB REP. 1).

1084-71-R: CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) v. TORONTO GENERAL HOSPITAL (RESPONDENT) v. CANADIAN UNION OF OPERATING ENGINEERS, LOCAL 101 (INTERVENER #1) v. CANADIAN UNION OF PUBLIC EMPLOYEES (INTERVENER #2).

- AND -

1112-71-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. TORONTO GENERAL HOSPITAL (RESPONDENT) v. CANADIAN UNION OF OPERATING ENGINEERS - LOCAL 101 (INTERVENER #1) v. CSAO NATIONAL (INC.) (INTERVENER #2) v. CANADIAN UNION OF OPERATING ENGINEERS (INTERVENER #3).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT TORONTO, SAVE AND EXCEPT PROFESSIONAL MEDICAL STAFF, GRADUATE NURSING STAFF, UNDERGRADUATE

NURSES, REGISTERED NURSING ASSISTANTS, GRADUATE PHARMACISTS, UNDER-GRADUATE PHARMACISTS, GRADUATE DIETICIANS, STUDENT DIETICIANS, TECHNICAL PERSONNEL, PHYSIOTHERAPISTS, OCCUPATIONAL THERAPISTS, OFFICE AND CLERICAL STAFF, SUPERVISORS, FOREMEN AND ASSISTANT CHIEF ENGINEER AND PERSONS ABOVE THE RANK OF SUPERVISOR, FOREMAN AND ASSISTANT CHIEF ENGINEER, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS COVERED BY SUBSISTING COLLECTIVE AGREEMENTS." (1113 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE REPRESENTATIONS OF THE PARTIES). (FOR THE PURPOSE OF CLARITY THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT CHAPLAINS, PHYSICISTS, SPEECH THERAPISTS, AUDIOLOGISTS, PSYCHOLOGISTS AND PSYCHOMETRISTS, SOCIAL WORKERS AND CASE ASSISTANTS, MEDICAL LIBRARIANS, MEDICAL RECORD LIBRARIANS AND REMEDIAL GYMNASTS ARE NOT INCLUDED IN THE BARGAINING UNIT). (FOR THE PURPOSE OF CLARITY THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT THE TERM "TECHNICAL PERSONNEL" INCLUDES TECHNOLOGISTS, TECHNICIANS AND ASSISTANTS IN THE FOLLOWING UNITS: MEDICAL LABORATORY, RADIOLOGY, RADIOTHERAPY, ELECTRO-ENCEPHALOGRAPHY, AUDIOLOGY, MEDICAL ENGINEERING, NUCLEAR MEDICINE, INHALATION THERAPY, HYPERBARIC CHAMBER, RENAL DIALYSIS, CLINICAL INVESTIGATION, PULMONARY FUNCTION, CARDIOVASCULAR INVESTIGATION, OPHTHALMOLOGY, VERTIGO, PACEMAKER CLINIC, PHARMACY AND CEREBRAL-VASCULAR; AND FURTHER INCLUDES HYPERBARIC CHAMBER CONTROLLERS, PERFUSIONISTS, MEDICAL PHOTOGRAPHERS AND TECHNICIANS, DENTAL HYGIENISTS, CHAIRSIDE ASSISTANTS AND X-RAY TECHNOLOGISTS IN THE DENTAL UNIT, OPERATING ROOM TECHNICIANS, AUDIO-VISUAL AID TECHNICIANS AND PERSONS IN TRAINING TO BECOME SUCH TECHNICAL PERSONNEL).

(SEE DECISION [1972] OLRB REP. 33).

1190-71-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 493 (APPLICANT) V. CON-DIGN LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE TOWNSHIP OF DYMOND AND THE TOWNSHIPS IMMEDIATELY ADJACENT THERETO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (10 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

(SEE DECISION [1972] OLRB REP. 83).

1203-71-R: LANARK COUNTY BOARD OF EDUCATION CUSTODIANS AND MAINTENANCE EMPLOYEES' ASSOCIATION (APPLICANT) V. THE LANARK COUNTY OF BOARD OF EDUCATION (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN MAINTENANCE, SERVICES AND PLANT OPERATIONS, SAVE AND EXCEPT AREA SUPERVISORS OR FOREMEN AND PERSONS ABOVE THE RANK OF AREA SUPERVISOR OR FOREMAN." (77 EMPLOYEES IN THE UNIT).

1225-71-R: BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 183, AFFILIATED WITH THE S.E.I.U. A.F. of L., C.I.O., C.L.C. (APPLICANT) v. NEW ORCHARD LODGE LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT OTTAWA, SAVE AND EXCEPT PROFESSIONAL NURSING STAFF, PHYSIOTHERAPISTS, OCCUPATIONAL THERAPISTS, SUPERVISORS, FOREMEN, PERSONS ABOVE THE RANK OF SUPERVISOR AND FOREMAN, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (40 EMPLOYEES IN THE UNIT).

1252-71-R: LOCAL UNION 742 INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (APPLICANT) v. HYDRO-ELECTRIC COMMISSION OF THE CITY OF PEMBROKE (RESPONDENT) v. EMPLOYEE (OBJECTOR).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT PEMBROKE SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (9 EMPLOYEES IN THE UNIT).

1265-71-R: AMALGAMATED CLOTHING WORKERS OF AMERICA (APPLICANT) v. STRUDEX FIBRES LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WATERLOO, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN AND FORELADY, SUPERVISORS, OFFICE AND SALES STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (24 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

(SEE DECISION [1972] OLRB REP. 31)

1281-71-R: INTERNATIONAL PRINTING PRESSMEN AND ASSISTANTS' UNION OF NORTH AMERICA (APPLICANT) v. THE DAILY STANDARD-FREEHOLDER (RESPONDENT).

UNIT: "ALL PRESSMEN-STEREOTYPERS AND APPRENTICES IN THE PRESS-STEREO DEPARTMENT OF THE RESPONDENT IN ITS NEWSPAPER PLANT AT CORNWALL, SAVE AND EXCEPT FOREMEN AND PERSONS ABOVE THE RANK OF FOREMAN." (5 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

1306-71-R: THE UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA (APPLICANT) v. ALGOMA MAINTENANCE & SERVICES LIMITED (RESPONDENT).

UNIT: "ALL MILLWRIGHTS AND MILLWRIGHTS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE DISTRICT OF KENORA, INCLUDING THE PATRICIA PORTION, AND THAT PART OF THE RESPONDENT'S PROJECT AT THE MATTA BI MINE SITE LOCATED IN THE DISTRICT OF THUNDER BAY, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (12 EMPLOYEES IN THE UNIT).

1355-71-R: CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) v. 400 UNIVERSITY AVENUE PROSPECT COMPANY (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT 400 UNIVERSITY AVENUE IN TORONTO, SAVE AND EXCEPT THE SUPERINTENDENT AND PERSONS ABOVE THE RANK OF SUPERINTENDENT AND SECURITY GUARDS." (34 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

(SEE DECISION [1972] OLRB REP. 110).

1360-71-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS LOCAL UNION 721 (APPLICANT) v. INDAL CANADA LIMITED, ALUMIPRIME DIVISION (RESPONDENT).

UNIT: "ALL WINDOW INSTALLERS AND THEIR HELPERS IN THE EMPLOY OF THE RESPONDENT IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (32 EMPLOYEES IN THE UNIT).

(SEE DECISION [1972] OLRB REP. 58).

1365-71-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) v. CATALYTIC ENTERPRISES LIMITED (RESPONDENT) v. UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND THE PIPE FITTING INDUSTRY LOCAL UNION 663 (INTERVENER #1) v. SHEET METAL WORKERS INTERNATIONAL ASSOC., LOCAL 539 (INTERVENER #2) v. LOCAL 530 INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (INTERVENER #3) v. INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, LOCAL 880 (INTERVENER #4) v. LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 1089 (INTERVENER #5) v. UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL 1256 (INTERVENER #6) v. MILLWRIGHT LOCAL 1592, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (INTERVENER #7) v. INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS - LOCAL UNION No. 700 (INTERVENER #8).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WORKING AT THE CENTRAL TOOL ROOM, 215 TUNNEL STREET, SARNIA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND THOSE PERSONS COVERED BY SUBSISTING COLLECTIVE AGREEMENTS IN THE CONSTRUCTION INDUSTRY IN SARNIA WHO MAY BE TEMPORARILY EMPLOYED ON CONSTRUCTION WORK FROM TIME TO TIME AT THE CENTRAL TOOL ROOM." (5 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE REPRESENTATIONS OF THE PARTIES).

1370-71-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) v. J.P. & SONS ELECTRIC LIMITED (RESPONDENT).

UNIT: "ALL ELECTRICIANS AND ELECTRICIANS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF NIAGARA AND THE COUNTY OF HALDIMAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

1372-71-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. ACTIVE EXCAVATING CONTRACTING LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

1374-71-R: INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796 (APPLICANT) V. MARBON DIVISION, BORG-WARNER (CANADA) LIMITED (RESPONDENT) V. EMPLOYEE (OBJECTOR).

UNIT: "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS IN THE EMPLOY OF THE RESPONDENT IN THE BOILER ROOM OF ITS PLANT IN HAMILTON TOWNSHIP IN THE COUNTY OF NORTHUMBERLAND, SAVE AND EXCEPT CHIEF ENGINEER." (4 EMPLOYEES IN THE UNIT).

1379-71-R: BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 183 AFFILIATED WITH S.E.I.U., A.F. OF L., C.I.O., C.L.C. (APPLICANT) V. EXTENDICARE (CANADA) LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT OTTAWA, SAVE AND EXCEPT PROFESSIONAL NURSING STAFF, PHYSIOTHERAPISTS, OCCUPATIONAL THERAPISTS, SUPERVISORS, FOREMEN, PERSONS ABOVE THE RANK OF SUPERVISOR AND FOREMAN, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (35 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

1381-71-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. FRITZ W. GLITSCH & SONS (CANADA) LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT UXBRIDGE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (40 EMPLOYEES IN THE UNIT).

1382-71-R: THE CIVIL SERVICE ASSOCIATION OF ONTARIO (INC.) (APPLICANT) V. VICTORIA HOSPITAL BOARD OF TRUSTEES OF THE CITY OF LONDON (RESPONDENT).

UNIT: "ALL TECHNICAL PERSONNEL OF THE RESPONDENT AT ITS HOSPITAL AT LONDON SAVE AND EXCEPT PROFESSIONAL MEDICAL STAFF, GRADUATE NURSING STAFF, UNDERGRADUATE NURSES, GRADUATE PHARMACISTS, UNDERGRADUATE PHARMACISTS, GRADUATE DIETITIANS, STUDENTS DIETITIANS, SOCIAL WORKERS, CHIEF ENGINEER AND ASSISTANT CHIEF ENGINEER, RESIDENCE DIRECTOR, SUPERVISORS, FOREMEN, PERSONS ABOVE THE RANK OF SUPERVISOR OR FOREMAN, OFFICE AND CLERICAL STAFF, WATCHMEN, SECURITY GUARDS, REGISTERED NURSING ASSISTANTS, STUDENT REGISTERED NURSING ASSISTANTS, STUDENTS ENGAGED IN A CO-OPERATIVE PROGRAM BETWEEN THE RESPONDENT AND A UNIVERSITY OR COLLEGE, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK, STUDENTS EMPLOYED DURING SCHOOL VACATION PERIODS AND THOSE PERSONS COVERED BY SUBSISTING COLLECTIVE AGREEMENTS BETWEEN THE RESPONDENT AND THE CIVIL SERVICE ASSOCIATION OF ONTARIO (INC.) AND LONDON AND DISTRICT BUILDING SERVICE WORKERS' UNION, LOCAL 220." (53 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES). (FOR THE PURPOSES OF CLARITY, THE BOARD NOTED THE FURTHER AGREEMENT OF THE PARTIES THAT: (A) THE TERM "TECHNICAL PERSONNEL" IN THE ABOVE BARGAINING UNIT INCLUDES RADIOLOGICAL TECHNICIANS, ELECTROENCEPHALOGRAPH TECHNICIANS, AUTOPSY MASTERS, ELECTROCARDIOGRAPH TECHNICIANS, REGISTERED RESPIRATORY TECHNOLOGISTS, GLAUCOMA TECHNICIANS, EAR, NOSE AND THROAT TECHNICIANS, CARDIOVASCULAR TECHNICIANS AND ELECTRONIC TECHNICIANS IN THE PULMONARY FUNCTION LABORATORY, ALL OF WHOM SHOW A COMMUNITY OF INTEREST SEPARATE AND DISTINCT FROM OTHER TECHNICAL PERSONNEL; (B) GRADUATE AND UNDERGRADUATE SPEECH THERAPISTS, PHYSIOTHERAPISTS, OCCUPATIONAL THERAPISTS, PSYCHOLOGISTS, PSYCHOMETRISTS, AUDIOLOGISTS AND STAFF WITH VETERINARIAN DEGREES ARE EXCLUDED FROM THE BARGAINING UNIT; (C) THE TERM "OFFICE AND CLERICAL STAFF" INCLUDES WARD CLERKS, ADMITTING PORTER CLERKS, INFORMATION CLERKS, CASHIERS, MAIL CLERK-MESSENGERS, LIBRARIANS AND SWITCHBOARD OPERATORS; (D) INSTRUCTOR TECHNOLOGISTS OR TECHNICIANS AND STUDENT TECHNOLOGISTS OR TECHNICIANS IN THE REGIONAL SCHOOL OF MEDICAL LABORATORY TECHNOLOGY ARE NOT INCLUDED IN THE BARGAINING UNIT.).

(SEE DECISION [1972] OLRB REP. 52).

1387-71-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. CORPORATION OF THE TOWN OF HANOVER (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT HANOVER, SAVE AND EXCEPT TOWN FOREMAN, PERSONS ABOVE THE RANK OF TOWN FOREMAN AND OFFICE STAFF." (7 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

1388-71-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE COMMUNITY CENTRE'S BOARD OF THE TOWN OF HANOVER (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT HANOVER, SAVE AND EXCEPT MANAGER, PERSONS ABOVE THE RANK OF MANAGER AND OFFICE STAFF." (4 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

1402-71-R: CHRISTIAN TRADE UNIONS OF CANADA (LOCAL 6) (APPLICANT) v. BRADFIELD-HEINE CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS, CARPENTERS' APPRENTICES AND CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF WENTWORTH AND THE TOWNSHIP OF NASSAGAWEYA AND THE TOWN OF BURLINGTON IN THE COUNTY OF HALTON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

1413-71-R: THE CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. THE CORPORATION OF THE TOWNSHIP OF BLACK RIVER - MATHESON (RESPONDENT).

UNIT: "ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT, SAVE AND EXCEPT CLERK-TREASURER AND THOSE ABOVE THE RANK OF CLERK-TREASURER." (4 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES). (FOR THE PURPOSE OF CLARITY, THE BOARD NOTED THE FURTHER AGREEMENT OF THE PARTIES THAT AT THE DATE OF THE FILING OF THIS APPLICATION, THERE WAS NO INCUMBENT IN THE CLASSIFICATION OF ASSISTANT CLERK-TREASURER. THE BOARD, ACCORDINGLY, IN THESE CIRCUMSTANCES, MAKES NO FINDING CONCERNING THE STATUS OF THIS POSITION).

1414-71-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) v. BROCK CONTAINERS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE MUNICIPALITY OF BRAMPTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (26 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

1424-71-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 837 (APPLICANT) v. TRICON CONSTRUCTION CORPORATION (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF WENTWORTH AND THE TOWNSHIP OF NASSAGAWEYA AND THE TOWN OF BURLINGTON IN THE COUNTY OF HALTON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (14 EMPLOYEES IN THE UNIT).

1434-71-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (APPLICANT) v. THE STANDARD HOUSE WRECKING & LUMBER CO. LTD. (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT ENGAGED IN BUILDING PROJECTS IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE

TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (19 EMPLOYEES IN THE UNIT). (FOR THE PURPOSES OF CLARITY THE BOARD NOTED THAT THE EMPLOYEES IN THE ABOVE-NOTED BARGAINING UNIT ARE ENGAGED IN DEMOLITION WORK).

1439-71-R: WAREHOUSEMEN & MISCELLANEOUS DRIVERS UNION LOCAL 419 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. SOUTHAM MURRAY, A DIVISION OF THE SOUTHAM PRINTING CO. LTD. (RESPONDENT) V. TORONTO NEWSPAPER PRINTING PRESSMEN'S UNION NO. 1 (INTERVENER).

UNIT: "ALL PARTIES, THE BOARD FINDS IN THE CIRCUMSTANCES OF THIS CASE THAT ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, COPY HOLDERS, COPY CLERKS, CUT ROOM EMPLOYEES, SECURITY GUARDS, EMPLOYEES ENGAGED ON A CASUAL OR SEASONAL BASIS, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND EMPLOYEES PRESENTLY COVERED UNDER SUBSISTING COLLECTIVE AGREEMENTS WITH OTHER UNIONS." (117 EMPLOYEES IN THE UNIT).

1444-71-R: INTERNATIONAL MOLDERS & ALLIED WORKERS UNION A.F.L.-C.I.O.-C.L.C. (APPLICANT) V. BLOW MOLD TOOLING LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT ASSISTANT FOREMEN, PERSONS ABOVE THE RANK OF ASSISTANT FOREMAN, DRAFTSMEN, OFFICE AND SALES STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (22 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

1446-71-R: MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES, LOCAL 647 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. FRITO-LAY CANADA LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT LONDON, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (7 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

1451-71-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 93 (APPLICANT) V. MASTERCRAFT BRIDGE AND ENGINEERING CONSTRUCTION (OTTAWA) LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON AND THE UNITED

COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

1459-71-R: THE BRICKLAYERS, MASONS AND PLASTERERS INTERNATIONAL UNION OF AMERICA (APPLICANT) V. ALLY CONSTRUCTION LTD. (RESPONDENT).

UNIT: "ALL BRICKLAYERS AND BRICKLAYERS' APPRENTICES, STONEMASONS AND STOREMASONS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF OXFORD, PERTH, HURON, MIDDLESEX, BRUCE AND ELGIN, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

1471-71-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 93 (APPLICANT) V. G. TAMBLYN LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

1480-71-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (APPLICANT) V. TEPPERMAN AND SONS LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (84 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

1490-71-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (APPLICANT) V. ADVANCE LUMBER & WRECKING CO. (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (21 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

APPLICATIONS CERTIFIED SUBSEQUENT TO PRE-HEARING VOTE

1054-71-R: UNION OF EMPLOYEES OF BOOTH TRANSPORT COMPANY LIMITED (APPLICANT) V. BOOTH TRANSPORT CO. LIMITED (RESPONDENT) V. CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WORKING AT AND OUT OF THE SIMCOE AND AYLMER TERMINALS, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, CLERICAL EMPLOYEES, SECURITY GUARDS AND OFFICE JANITORS." (14 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	14
NUMBER OF PERSONS WHO CAST BALLOTS	12
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	11
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER	1

1151-71-R: NIPISSING INDEPENDENT UNION (APPLICANT) V. DU PONT OF CANADA LIMITED (RESPONDENT) V. INTERNATIONAL UNION OF DISTRICT 50, ALLIED AND TECHNICAL WORKERS OF THE UNITED STATES AND CANADA (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS NIPISSING WORKS AT NORTH BAY, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, NURSING STAFF, OFFICE AND SALES STAFF AND SECURITY GUARDS." (178 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	179
NUMBER OF PERSONS WHO CAST BALLOTS	168
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	99
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER	69

1237-71-R: BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION LOCAL 183, AFFILIATED SEIU, A.F.L., C.I.O., C.L.C. (APPLICANT) V. BEACON HILL LODGES OF CANADA LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT OTTAWA, SAVE AND EXCEPT PROFESSIONAL NURSING STAFF, PHYSIOTHERAPISTS, OCCUPATIONAL THERAPISTS, SUPERVISORS, FOREMEN, PERSONS ABOVE THE RANK OF SUPERVISOR AND FOREMAN, OFFICE STAFF, SECURITY GUARDS, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (126 EMPLOYEES IN THE UNIT). (FOR THE PUR-

POSES OF CLARITY AND FOR THE REASONS GIVEN BY THE BOARD IN ITS DECISION DATED JANUARY 12, 1972, THE BOARD FINDS THAT THE QUASI-PROFESSIONAL STAFF (R.N.A.'S AND QUALIFIED EQUIVALENTS) ARE EMPLOYEES OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT.).

NUMBER OF NAMES OF PERSONS ON REVISED		
VOTERS' LIST		106
NUMBER OF PERSONS WHO CAST BALLOTS	53	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	52	
NUMBER OF BALLOTS MARKED AGAINST		
APPLICANT	1	

(SEE DECISION [1972] OLRB REP. 88).

APPLICATIONS CERTIFIED SUBSEQUENT TO POST-HEARING VOTE

435-71-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. DELUXE STAIR CUSHION LTD. (RESPONDENT) V. RESILIENT FLOOR WORKERS, UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL 2965 (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN THE INSTALLATION OF CARPETS IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS'		
LIST		3
NUMBER OF PERSONS WHO CAST BALLOTS	3	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	0	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF INTERVENER	3	

975-71-R: CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT & GENERAL WORKERS (APPLICANT) V. CROSBY VOLKSWAGEN LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT KITCHENER SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (22 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST		21
NUMBER OF PERSONS WHO CAST BALLOTS	18	
NUMBER OF SPOILED BALLOTS	1	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	10	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	7	

1111-71-R: INTERNATIONAL UNION OF DISTRICT 50, ALLIED AND TECHNICAL WORKERS OF THE UNITED STATES AND CANADA (APPLICANT) v. STEIN-HALL, LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS PLANTS IN METROPOLITAN TORONTO, SAVE AND EXCEPT FORMEN, PERSONS ABOVE THE RANK OF FOREMAN, LABORATORY STAFF, OFFICE STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		27
NUMBER OF PERSONS WHO CAST BALLOTS	27	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	21	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	6	

1215-71-R: INTERNATIONAL UNION, UNITED AUTOMOBILE AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, U.A.W. (APPLICANT) v. BINDER TOOL AND MOLD LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

- AND -

1262-71-R: INTERNATIONAL UNION, UNITED AUTOMOBILE AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, U.A.W. (APPLICANT) v. BINDER TOOL AND MOLD LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WINDSOR AND THE TOWNSHIP OF SANDWICH SOUTH, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (94 EMPLOYEES IN THE UNIT). (THE BOARD FURTHER STATED IN PARAGRAPH 4 OF ITS DECISION DATED DECEMBER 7TH, 1971: "FOR THE PURPOSE OF CLARITY THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT PERSONS IN THE ENGINEERING DEPARTMENT ARE NOT INCLUDED IN THE BARGAINING UNIT AND THAT WILHELM PRATTES, NIGHT SHIFT SUPERVISOR, IS NOT INCLUDED IN THE BARGAINING UNIT.).

NUMBER OF NAMES OF PERSONS ON REVISED		
VOTERS' LIST		139
NUMBER OF PERSONS WHO CAST BALLOTS	133	
NUMBER OF SPOILED BALLOTS	3	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	74	
NUMBER OF BALLOTS MARKED AGAINST		
APPLICANT	56	

1263-71-R: SERVICE EMPLOYEES UNION - LOCAL 204 AFFILIATED WITH THE S.E.I.U., A.F. OF L., C.I.O. C.L.C. (APPLICANT) V. LEISURE WORLD NURSING HOMES LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO SAVE AND EXCEPT PROFESSIONAL NURSING STAFF, PHYSIOTHERAPISTS, OCCUPATIONAL THERAPISTS, SUPERVISORS, FOREMEN, PERSONS ABOVE THE RANK OF SUPERVISORS OR FOREMAN, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (158 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST		97
NUMBER OF PERSONS WHO CAST BALLOTS	87	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	68	
NUMBER OF BALLOTS MARKED AGAINST		
APPLICANT	19	

APPLICATIONS FOR CERTIFICATION DISMISSED DURING JANUARY

NO VOTE CONDUCTED

1129-71-R: ZEHR'S MARKETS EMPLOYEES ASSOCIATION (APPLICANT) V. ZEHR'S MARKETS LIMITED (RESPONDENT) V. RETAIL CLERKS INTERNATIONAL ASSOCIATION (INTERVENER #1) V. RETAIL AND FOOD EMPLOYEES LOCAL UNION 175, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (INTERVENER #2) V. LOCAL UNION 633, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (INTERVENER #3). (983 EMPLOYEES).

1150-71-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 837 (APPLICANT) V. DOU RAY EXCAVATING AND SEWER LTD. (RESPONDENT). (17 EMPLOYEES).

1208-71-R: OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION LOCAL 48 (APPLICANT) V. THE BOARD OF EDUCATION FOR THE CITY OF TORONTO (RESPONDENT) V. INTERNATIONAL BROTHERHOOD OF PAINTERS AND

ALLIED TRADES, LOCAL UNION 557 (INTERVENER #1) V. TORONTO BUILDING AND CONSTRUCTION TRADES COUNCIL (INTERVENER #2). (26 EMPLOYEES).

(SEE DECISION [1972] OLRB REP. 90).

1367-71-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. MCLEOD & SONS (RESPONDENT) V. INTERNATIONAL BROTHERHOOD OF PAINTERS AND ALLIED TRADES, LOCAL UNION 1824 (INTERVENER). (3 EMPLOYEES).

(SEE DECISION [1972] OLRB REP. 102).

1371-71-R: LOCAL UNION 1190, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. RELAC CONSTRUCTION LTD. (RESPONDENT) V. LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (INTERVENER) V. GROUP OF EMPLOYEES (OBJECTORS). (6 EMPLOYEES).

1390-71-R: GILBARCO EMPLOYEES UNION (APPLICANT) V. GILBARCO CANADA LTD. (RESPONDENT) V. INTERNATIONAL UNION OF ELECTRICAL RADIO & MACHINE WORKERS - AFL, CIO, CLC (INTERVENER). (135 EMPLOYEES).

1412-71-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. MASTERCRAFT CONSTRUCTION (OTTAWA) 1969 LIMITED (RESPONDENT). (NO EMPLOYEES).

1435-71-R: OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, LOCAL UNION NO. 598 (APPLICANT) V. THE BOARD OF EDUCATION FOR THE CITY OF TORONTO (RESPONDENT). (6 EMPLOYEES).

1438-71-R: ROBERT ALBERT SMITH (APPLICANT) V. CANADIAN UNION OF PUBLIC EMPLOYEES LOCAL # 1424 (RESPONDENT). (6 EMPLOYEES).

1450-71-R: UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA, AFL-CIO-CLC (APPLICANT) V. WHITMAN GOLDEN LIMITED (RESPONDENT). (12 EMPLOYEES).

CERTIFICATION DISMISSED SUBSEQUENT TO PRE-HEARING VOTE

955-71-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. ALCAN BUILDING PRODUCTS LIMITED (RESPONDENT).

VOTING CONSTITUENCY: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (84 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	84
NUMBER OF PERSONS WHO CAST BALLOTS	80
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	38
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	42

1121-71-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183
(APPLICANT) V. SWINGLINE OF CANADA LTD. (RESPONDENT).

VOTING CONSTITUENCY: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN
TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN,
OFFICE AND SALES STAFF, SECURITY GUARDS, PERSONS REGULARLY EMPLOYED FOR
NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE
SCHOOL VACATION PERIOD." (110 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	100
NUMBER OF PERSONS WHO CAST BALLOTS	94
BALLOTS SEGREGATED AND NOT COUNTED	1
NUMBER OF SPOILED BALLOTS	2
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	35
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	56

1289-71-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. INGERSOLL
SANITATION CO. LTD. (RESPONDENT).

VOTING CONSTITUENCY: "ALL EMPLOYEES OF THE RESPONDENT WORKING AT OR OUT
OF INGERSOLL, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FORE-
MAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE
THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION
PERIOD." (15 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	11
NUMBER OF PERSONS WHO CAST BALLOTS	11
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	0
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	11

1319-71-R: BAKERY & CONFECTIONERY WORKERS' INTERNATIONAL UNION OF AMERICA, LOCAL 264 (APPLICANT) V. MARGARET'S FINE FOODS LIMITED (RESPONDENT).

VOTING CONSTITUENCY: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN AND FORELADY, DRIVER-SALESMEN, RETAIL CLERKS AND WAITRESSES EMPLOYED IN THE RESTAURANT AND OFFICE AND SALES STAFF." (87 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON REVISED		
VOTERS' LIST		88
NUMBER OF PERSONS WHO CAST BALLOTS	81	
NUMBER OF SPOILED BALLOTS	1	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	24	
NUMBER OF BALLOTS MARKED AGAINST		
APPLICANT	56	

1373-71-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT) V. HAYDEN MACDONALD (OSHAWA) LIMITED (RESPONDENT).

VOTING CONSTITUENCY: "ALL EMPLOYEES OF THE RESPONDENT AT OSHAWA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (23 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON VOTERS'		
LIST		21
NUMBER OF PERSONS WHO CAST BALLOTS	21	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	8	
NUMBER OF BALLOTS MARKED AGAINST		
APPLICANT	13	

CERTIFICATION DISMISSED SUBSEQUENT TO POST-HEARING VOTE

928-71-R: INTERNATIONAL BROTHERHOOD OF POTTERY AND ALLIED WORKERS (APPLICANT) V. BLUE MOUNTAIN POTTERY DIVISION OF THE INTERNATIONAL SILVER CO. OF CANADA LTD. (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE TOWN OF COLLINGWOOD, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE AND SALES STAFF." (97 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		104
NUMBER OF PERSONS WHO CAST BALLOTS	102	
BALLOTS SEGREGATED AND NOT COUNTED	6	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	46	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	50	

1178-71-R: SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, LOCAL UNION 562 (APPLICANT) V. JAMESWAY CO. LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT PRESTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE, SALES AND SERVICE STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (52 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		49
NUMBER OF PERSONS WHO CAST BALLOTS	48	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	17	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	31	

APPLICATIONS FOR CERTIFICATION WITHDRAWN DURING JANUARY

1380-71-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. HALD-IMAND QUARRIES & CONSTRUCTION LTD. (RESPONDENT). (22 EMPLOYEES).

1396-71-R: RENOLD CANADA LIMITED EMPLOYEES ASSOCIATION (APPLICANT) V. RENOLD CANADA LTD. (RESPONDENT). (36 EMPLOYEES).

1427-71-R: CANADIAN FOOD AND ALLIED WORKERS LOCAL UNION 175, CHARTERED BY THE AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (APPLICANT) V. IMPERIAL OIL LIMITED (RESPONDENT). (18 EMPLOYEES).

1428-71-R: CANADIAN FOOD AND ALLIED WORKERS LOCAL UNION 175, CHARTERED BY THE AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (APPLICANT) V. IMPERIAL OIL LIMITED (RESPONDENT). (25 EMPLOYEES).

1429-71-R: OFFICE & PROFESSIONAL EMPLOYEES INTERNATIONAL UNION (APPLICANT) V. MICHAEL ROSEN REAL ESTATE LIMITED (RESPONDENT). (28 EMPLOYEES).

1441-71-R: CANADIAN FOOD AND ALLIED WORKERS LOCAL UNION 175, CHARTERED BY THE AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (APPLICANT) V. INTERCITY FOOD SERVICES LTD. (RESPONDENT). (33 EMPLOYEES).

APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS DISPOSED
OF DURING JANUARY

1026-71-R: THE DRAFTSMEN OF PROVINCIAL CRANE DIVISION OF DOMINION BRIDGE COMPANY LIMITED, NIAGARA FALLS, ONTARIO (APPLICANTS) V. DRAFTSMEN'S ASSOCIATION OF ONTARIO, LOCAL 164, AMERICAN FEDERATION OF TECHNICAL ENGINEERS, A.F.L.-C.I.O., C.L.C. (RESPONDENT) V. PROVINCIAL CRANE DIVISION OF DOMINION BRIDGE COMPANY LIMITED (INTERVENER). (GRANTED).

UNIT: "ALL DRAFTSMEN EMPLOYED BY PROVINCIAL CRANE DIVISION OF DOMINION BRIDGE COMPANY LIMITED IN THE NIAGARA FALLS DRAWING OFFICE, 4674 FERGUSON STREET, SAVE AND EXCEPT SUPERVISORS AND PERSONS ABOVE THE RANK OF SUPERVISOR." (8 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	10
NUMBER OF PERSONS WHO CAST BALLOTS	10
NUMBER OF BALLOTS MARKED IN FAVOUR OF RESPONDENT	0
NUMBER OF BALLOTS MARKED AGAINST RESPONDENT	10

1196-71-R: HARRY DONALD BEANLAND (APPLICANT) V. HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL (LOCAL 197) (RESPONDENT). (GRANTED).

UNIT: "ALL EMPLOYEES OF PICTON HOUSE AT HAMILTON, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (3 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	3
NUMBER OF PERSONS WHO CAST BALLOTS	3
NUMBER OF BALLOTS MARKED IN FAVOUR OF RESPONDENT	0
NUMBER OF BALLOTS MARKED AGAINST RESPONDENT	3

1224-71-R: MR. ALLAN DALE & MR. BERNARD MAHONEY (APPLICANTS) V. DRAFTSMEN'S FEDERATION OF TECHNICAL ENGINEERS, A.F. OF L. - C.I.O., C.L.C. (RESPONDENT) V. DOMINION BRIDGE COMPANY LIMITED - ONTARIO BRANCH (INTERVENER). (GRANTED).

UNIT: "ALL DRAFTSMEN EMPLOYED BY DOMINION BRIDGE COMPANY LIMITED - ONTARIO BRANCH IN THE DRAWING OFFICE, MOUNT DENNIS PLANT, SAVE AND EXCEPT SQUAD LEADERS AND THOSE ABOVE THE RANK OF SQUAD LEADER." (135 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST		35
NUMBER OF PERSONS WHO CAST BALLOTS	33	
NUMBER OF BALLOTS MARKED IN FAVOUR OF RESPONDENT	13	
NUMBER OF BALLOTS MARKED AGAINST RESPONDENT	20	

1273-71-R: PENNY JESSOP (APPLICANT) V. NURSES' ASSOCIATION ST. MARY'S GENERAL HOSPITAL (RESPONDENT). (GRANTED).

UNIT: "ALL LAY, REGISTERED AND GRADUATE NURSES EMPLOYED BY ST. MARY'S GENERAL HOSPITAL AT KITCHENER ENGAGED IN TEACHING, SAVE AND EXCEPT HEAD NURSES AND PERSONS ABOVE THE RANK OF HEAD NURSE, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (11 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST		11
NUMBER OF PERSONS WHO CAST BALLOTS	11	
NUMBER OF BALLOTS MARKED IN FAVOUR OF RESPONDENT	0	
NUMBER OF BALLOTS MARKED AGAINST RESPONDENT	11	

1323-71-R: D'ARCY COLEMAN (APPLICANT) V. LOCAL 197 OF THE HOTEL AND RESTAURANT EMPLOYEES' AND BARTENDERS' INTERNATIONAL UNION, A.F.L.-C.I.O.-C.L.C. (RESPONDENT). (GRANTED).

UNIT: "ALL WAITERS AND BARTENDERS EMPLOYED BY THE WELLINGTON HOTEL AT GUELPH, SAVE AND EXCEPT OWNERS, MANAGERS AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (5 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS'		
LIST		5
NUMBER OF PERSONS WHO CAST BALLOTS	4	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF RESPONDENT	0	
NUMBER OF BALLOTS MARKED AGAINST		
RESPONDENT	4	

1334-71-R: WILFRID PYLE (APPLICANT) V. LAUNDRY, DRY CLEANING AND DYE HOUSE WORKERS' INTERNATIONAL UNION, LOCAL 351 (RESPONDENT). (GRANTED).

UNIT: "ALL ROUTE MEN EMPLOYED BY LANGLEY-PARISIAN LIMITED AT HAMILTON, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE AND SALES STAFF." (18 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS'		
LIST		15
NUMBER OF PERSONS WHO CAST BALLOTS	14	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF RESPONDENT	1	
NUMBER OF BALLOTS MARKED AGAINST		
RESPONDENT	13	

1468-71-R: SHIRLEY TOBEY (APPLICANT) V. SERVICE EMPLOYEES' UNION, LOCAL 210 (RESPONDENT). (44 EMPLOYEES). (DISMISSED).

1512-71-R: GRAHAM TRANSPORT LIMITED (APPLICANT) V. GENERAL TRUCK DRIVERS UNION, LOCAL 938 (RESPONDENT). (NO EMPLOYEES).

(SEE DECISION [1972] OLRB REP. 115).

APPLICATION FOR DECLARATION THAT STRIKE UNLAWFUL DISPOSED OF DURING

JANUARY

441-71-U: DELUXE STAIR CUSHION LIMITED (APPLICANT) V. LOCAL UNION 2965 THE RESILIENT FLOOR WORKERS UNITED BROTHERHOOD OF CARPENTERS AFL, CIO, HAROLD HINTON, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 27, ROBERT REID (RESPONDENTS). (WITHDRAWN).

APPLICATIONS FOR CONSENT TO PROSECUTE DISPOSED OF DURING JANUARY

1228-71-U: THE ONTARIO-MINNESOTA PULP AND PAPER COMPANY LIMITED (APPLICANT) V. DAVID DENNIS (RESPONDENT). (WITHDRAWN).

1229-71-U: THE ONTARIO-MINNESOTA PULP AND PAPER COMPANY LIMITED (APPLICANT) V. ALLAN ANDERSON ET AL (RESPONDENTS). (WITHDRAWN).

1290-71-U: CANADIAN UNION OF PUBLIC EMPLOYEES (COMPLAINANT) V. SUNNYDALE HOME (RESPONDENT). (WITHDRAWN).

1356-71-U: SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, LOCAL UNION 540 (APPLICANT) V. C/S CONSTRUCTION SPECIALTIES LIMITED (RESPONDENT). (WITHDRAWN).

1433-71-U: BRICKLAYER'S MASON'S INTERNATIONAL UNION NO. 5 ONTARIO (APPLICANT) V. 1. KEMP HOLDINGS LIMITED, P.O. BOX 52, STATION B 121 VANSITMART HAMILTON 23, 2. CHRISTOPHER BACHUI, 130 POTT RUFF RD. SOUTH, HAMILTON, ONTARIO (RESPONDENTS). (WITHDRAWN).

1449-71-U: THE GENERAL CONTRACTORS' SECTION OF THE TORONTO CONSTRUCTION ASSOCIATION (APPLICANT) V. INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL 721 AND SHERATON CONSTRUCTION LIMITED (RESPONDENTS). (DISMISSED).

APPLICATIONS FOR CONSENT TO PROSECUTE (HOSPITAL ARBITRATION ACT)

DISPOSED OF DURING JANUARY

10-71-PH: VERSAFOOD SERVICES LIMITED (APPLICANT) V. CANADIAN UNION OF GENERAL EMPLOYEES AND ITS LOCAL 500 (RESPONDENT). (WITHDRAWN).

12-71-PH: VERSAFOOD SERVICES LIMITED (APPLICANT) V. PATRICK MURPHY (RESPONDENT). (WITHDRAWN).

COMPLAINTS UNDER SECTION 79 (FORMERLY S. 65) (UNFAIR LABOUR PRACTICE)

DISPOSED OF DURING JANUARY

587-71-U: RETAIL AND FOOD EMPLOYEES LOCAL UNION 175, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (COMPLAINANT) V. SUN PARLOUR GREENHOUSE GROWERS' CO-OPERATIVE LIMITED, ARMSTRONG PRODUCE COMPANY LIMITED, A.M.C. PRODUCE SHIPPERS INCORPORATED, MASTRONARDI PRODUCE LIMITED, GARDEN ACRE SALES, AN AGENCY OF ONTARIO GREENHOUSE PRODUCERS MARKETING BOARD (RESPONDENTS). (GRANTED).

(SEE DECISION [1972] OLRB REP. 94).

805-71-U: CANADIAN UNION OF PUBLIC EMPLOYEES (COMPLAINANT) V. COCHRANE NURSING HOME (RESPONDENT). (WITHDRAWN).

872-71-U: THE INTERNATIONAL BROTHERHOOD OF PAINTERS AND ALLIED TRADES - LOCAL UNION 1783 (COMPLAINANT) V. FANSHAW PAINTING LIMITED (RESPONDENT). (GRANTED).

(SEE DECISION [1972] OLRB REP. 25).

952-71-U: ST. THOMAS SANITARY COLLECTION SERVICE EMPLOYEES ASSOCIATION (COMPLAINANT) V. ST. THOMAS SANITARY COLLECTION SERVICE LTD. (RESPONDENT). (WITHDRAWN).

1023-71-U: DON GEBBIE & MICHAEL LONGMOORE (COMPLAINANTS) V. STEVEN HARRIS AND LOCAL 200, INTERNATIONAL UNION, UNITED AUTOMOBILE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (RESPONDENTS). (DISMISSED).

1061-71-U: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (COMPLAINANT) V. LA COOPERATIVE AGRICOLE DE HEARST (RESPONDENT). (GRANTED).

1137-71-U: LUMBER & SAWMILL WORKERS UNION LOCAL 2537 OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (COMPLAINANT) V. WHOLESALE HOMES LIMITED (BLIND RIVER PLANT) (RESPONDENT). (WITHDRAWN).

1169-71-U: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (COMPLAINANT) V. ENTERPRISE SALES & DISTRIBUTORS LTD. (RESPONDENT). (WITHDRAWN).

1216-71-U: RETAIL CLERKS INTERNATIONAL ASSOCIATION (COMPLAINANT) V. MACLEODS, A DIVISION OF MACLEOD STEDMAN LIMITED (RESPONDENT). (DISMISSED).

(SEE DECISION [1972] OLRB REP. 48).

1238-71-U: INTERNATIONAL BROTHERHOOD OF PULP, SULPHITE AND PAPER MILL WORKERS (COMPLAINANT) V. BROCK CONTAINERS (OTTAWA) LTD. (RESPONDENT). (GRANTED).

1251-71-U: MRS. ODETTE VAN DER WOLF (COMPLAINANT) V. UNITED STEELWORKERS OF AMERICA, DISTRICT NO. 6 (RESPONDENT) V. ESSEX INTERNATIONAL OF CANADA LIMITED (INTERVENER). (DISMISSED).

(SEE DECISION [1972] OLRB REP. 104).

1294-71-U: CANADIAN UNION OF PUBLIC EMPLOYEES (COMPLAINANT) V. MARTIN MANOR NURSING HOME (RESPONDENT). (WITHDRAWN).

1295-71-U: CANADIAN UNION OF PUBLIC EMPLOYEES (COMPLAINANT) V. MARTIN MANOR NURSING HOME (RESPONDENT). (WITHDRAWN).

1309-71-U: AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC AND DOUGLAS ALAN HEDGER (COMPLAINANTS) v. TERMINAL BEEF COMPANY (RESPONDENT). (WITHDRAWN).

1350-71-U: JEAN CLAUDE CYR, REJEAN HARVEY, REJEAN BOUCHARD, JEAN PIERRE CHALIFOUX, LEOPOLD CHALIFOUX, MICHEL TRUDEL, CLAUDE DUROCHER, BERTRAND PILOTE, JEAN MARC PILOTE, CAMILE GODBOUT, LAURIAT BRISSON, JEAN BRADETTE, REMI CHALIFOUX, ROMEO MAYER, ROLAND PLOURDE, DANIEL BAZINET, DONALD BAZINET, ALLAN BAZINET, LIONEL DOYON, RAYMOND TURCOTTE, KEN CARD, GASTON MARQUIS, YVON RIVART, MIKE MULLIGAN, THOMAS THOMPSON, JEAN LUC MILOT (COMPLAINANTS) v. J. E. MARTEL & SONS LUMBER LIMITED (RESPONDENT). (WITHDRAWN).

1377-71-U: AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC AND DOUGLAS ALAN HEDGER (COMPLAINANTS) v. TERMINAL BEEF COMPANY (RESPONDENT). (WITHDRAWN).

1395-71-U: CANADIAN UNION OF PUBLIC EMPLOYEES (COMPLAINANT) v. INGERSOLL SANITATION CO. LTD. (RESPONDENT). (WITHDRAWN).

1403-71-U: FRED COOPER (COMPLAINANT) v. DRAFTSMEN'S ASSOCIATION OF ONTARIO, LOCAL 164 AND CANADIAN GENERAL ELECTRIC CO. LTD. (RESPONDENT). (WITHDRAWN).

1437-71-U: BRICKLAYERS' & MASONS' INTERNATIONAL UNION NO. 5 ONTARIO REPRESENTING MEMBERS OF LOCAL NO. 5 (COMPLAINANT) v. KEMP HOLDINGS LTD. & CHRISTOPHER BACHUI (RESPONDENTS). (WITHDRAWN).

APPLICATIONS UNDER SECTION 39 (FORMERLY S. 35(A)) DISPOSED OF DURING

JANUARY

130-70-M: JOHN RENSO NOBELS (APPLICANT) v. THE CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL UNION NO. 1065 (RESPONDENT TRADE UNION) v. JOSEPH BRANT MEMORIAL HOSPITAL OF THE BURLINGTON-NELSON HOSPITAL (RESPONDENT EMPLOYER).

(SEE DECISION [1972] OLRB REP. 89).

131-70-M: RALPH TERPSTRA (APPLICANT) v. THE CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL UNION NO. 1065 (RESPONDENT TRADE UNION) v. JOSEPH BRANT MEMORIAL HOSPITAL OF THE BURLINGTON-NELSON HOSPITAL (RESPONDENT EMPLOYER).

132-70-M: DIANE STROOP (APPLICANT) v. THE CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL UNION NO. 1065 (RESPONDENT TRADE UNION) v. JOSEPH

BRANT MEMORIAL HOSPITAL OF THE BURLINGTON-NELSON HOSPITAL (RESPONDENT EMPLOYER).

223-71-M: EGBERT WITTEN (APPLICANT) V. THE CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 44, RECREATION DEPARTMENT (RESPONDENT TRADE UNION) V. THE CORPORATION OF THE TOWN OF BURLINGTON (RESPONDENT EMPLOYER). (GRANTED).

(SEE DECISION [1972] OLRB REP. 73).

397-71-M: EDMUND T. WATSON (APPLICANT) V. INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) LOCAL 1132 (RESPONDENT TRADE UNION) V. BLACKSTONE INDUSTRIAL PRODUCTS LIMITED (RESPONDENT EMPLOYER). (GRANTED).

916-71-M: NORMAN JOHN FRIEND (APPLICANT) V. THE CANADIAN UNION OF PUBLIC EMPLOYEES, AND ITS LOCAL NO. 1196 (RESPONDENT TRADE UNION) V. THE YORK COUNTY BOARD OF EDUCATION (RESPONDENT EMPLOYER). (GRANTED).

(SEE DECISION [1972] OLRB REP. 65).

1394-71-M: GERRIT KERPEL (APPLICANT) V. SERVICE EMPLOYEES' UNION, LOCAL 210, WINDSOR, ONTARIO (RESPONDENT TRADE UNION) V. PUBLIC GENERAL HOSPITAL SOCIETY OF CHATHAM (RESPONDENT EMPLOYER). (GRANTED).

APPLICATIONS UNDER SECTION 55 (FORMERLY S. 47A) DISPOSED OF DURING

JANUARY

1058-71-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. DELLELCE CONSTRUCTION AND EQUIPMENT AND DELL CONSTRUCTION (SUDBURY) (RESPONDENTS) V. UNITED STEELWORKERS OF AMERICA (INTERVENER). (GRANTED).

(SEE DECISION [1972] OLRB REP. 60).

1244-71-R: AVONDALE DAIRY LIMITED (APPLICANT) V. RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, LOCAL 440, AFL/CIO/CLC (RESPONDENT).

VOTING CONSTITUENCY: "ALL EMPLOYEES OF AVONDALE DAIRY LIMITED EMPLOYED AT ITS CRYSTAL BEACH ONTARIO DEPOT SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE AND CLERICAL STAFF."

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	13
NUMBER OF PERSONS WHO CAST BALLOTS	13
NUMBER OF BALLOTS MARKED IN FAVOUR OF RESPONDENT	0
NUMBER OF BALLOTS MARKED AGAINST RESPONDENT	13

REFERENCES TO BOARD PURSUANT TO SECTION 96 (FORMERLY S. 79A)

776-71-M: STEINBERG'S LIMITED (MIRACLE MART DIVISION) (EMPLOYER) v. RETAIL CLERKS UNION, LOCAL NO. 486 (CHARTERED BY THE RETAIL CLERKS INTERNATIONAL ASSOCIATION) (TRADE UNION) v. CANADIAN MERCHANDISING EMPLOYEES' UNION (INTERVENER #1) v. RETAIL CLERKS INTERNATIONAL ASSOCIATION (INTERVENER #2).

(SEE DECISION [1972] OLRB REP. 18).

1338-71-M: NORTHDOWN DRYWALL & CONSTRUCTION LIMITED (EMPLOYER) v. WOOD, WIRE & METAL LATHERS INTERNATIONAL UNION LOCAL 97 (TRADE UNION) v. WOOD, WIRE & METAL LATHERS INTERNATIONAL UNION LOCAL 562 (ADDED AS A PARTY BY THE BOARD). (DISMISSED).

APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION - SECTION 79

(FORMERLY S. 65)

341-71-U: LOCAL 1966, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, A.F.L. - C.I.O. & C.L.C. (COMPLAINANT) v. JOHNSON CONTROLS LIMITED (RESPONDENT). (REQUEST DENIED).

(SEE DECISION [1972] OLRB REP. 57).

1023-71-U: DON GEBBIE & MICHAEL LONGMOORE (COMPLAINANTS) v. STEVEN HARRIS AND LOCAL 200, INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (RESPONDENTS). (REQUEST DENIED).

(SEE DECISION [1972] OLRB REP. 93).

APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION - JURISDICTIONAL
DISPUTE

1404-71-JD: ABE DICK MASONRY LIMITED (COMPLAINANT) v. 1) TRICON CONSTRUCTION CORPORATION; 2) LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 837; 3) UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 18 (RESPONDENTS). (REQUEST DENIED).

(SEE DECISION [1972] OLRB REP. 74).

1411-71-JD: NORTHDOWN DRYWALL & CONSTRUCTION LIMITED (COMPLAINANT) v. UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL 18; THE WOOD, WIRE & METAL LATHERS INTERNATIONAL UNION, LOCAL 562; ROBERTSON-YATES CORPORATION LIMITED (RESPONDENTS). (REQUEST DENIED).

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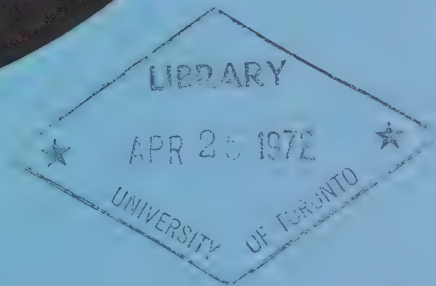
PAGES 121 - 186

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154



ONTARIO

Monthly Report



ONTARIO LABOUR RELATIONS BOARD

ONTARIO LABOUR RELATIONS BOARD REPORTS

A MONTHLY SERIES OF DECISIONS FROM THE

ONTARIO LABOUR RELATIONS BOARD

CITED [1972] OLRB REP.

CASES REPORTED

AIKEN, BARRON & ROEPKE LIMITED RE L.I.U. L. 837.....	157
BRACEBRIDGE WATER, LIGHT AND POWER COMMISSION RE C.U.P.E.....	164
CAMPEAU CORPORATION LIMITED RE I.U.O.E. L. 796 AND CANADIAN CONSTRUCTION BUILDING MAINTENANCE AND GENERAL WORKERS' UNION, (N.C.C.L.).....	166
CROOKS J. W. COMPANY LIMITED CARRYING ON BUSINESS IN THE NAME OF CROOKS REXALL PHARMACY AND TARGET DISCOUNT PHARMACY INC. CARRYING ON BUSINESS IN THE NAME OF TARGET DISCOUNT PHARMACY RE R.C.I.A. AND GROUP OF EMPLOYEES.....	126
DALTON ENGINEERING AND CONSTRUCTION COMPANY RE L.I.U. L. 247..	172
ECONOMICAL MUTUAL INSURANCE COMPANY RE INSURANCE EMPLOYEES UNION, L. 1668, C.L.C.....	176
EXTENDICARE (CANADA) LIMITED RE S.E.I. L. 204 AND C.U.P.E.....	122
FANSHAWE PAINTING LIMITED RE B.P.A.T.....	153
FOUNDATION-JANIN (A JOINT VENTURE) RE I.U.O.E. L. 793.....	137
FREEMAN ELECTRIC LIMITED RE I.B.E.W. L. 120.....	153
GENERAL MOTORS OF CANADA LIMITED RE THEODORE HOGETERP AND U.A.W. L. 222.....	132
LONG BRANCH WINDOW AND METAL CLEANING LIMITED RE B.S.O.I.W. L. 721 AND L.I.U. L. 506.....	129
MARTEL J. E. & SONS LUMBER LIMITED RE I.W.A. AND GROUP OF EMPLOYEES.....	146
MASON-KIEWIT RE I.B.E.W. L. 353, AND L.I.U. L. 506.....	169
NIPISSING BOARD OF EDUCATION RE C.U.P.E.....	173
PERCY WOODS RE U.S.A. L. 4912.....	121
PERF CONSTRUCTION COMPANY RE L.I.U. L. 183 AND O.P.C.M. L. 172.....	124

ROBERT ALLAN, ET AL RE THE CANADIAN LITHOGRAPHERS ASSOC. INC., COUNCIL OF PRINTING INDUSTRIES OF CANADA AND SOUTHAM MURRAY, A DIVISION OF THE SOUTHAM PRINTING COMPANY LIMITED.....	168
SENTINEL RELIANCE PRODUCTS LIMITED RE B.S.O.I.W. L. 786 AND ONTARIO ERECTORS ASSOC. AND B.S.O.I.W.....	141
STANLEY STEEL COMPANY LIMITED RE CANADIAN UNION OF OPERATING ENGINEERS AND U.S.A.....	181
SWISS CHALET B-Q A DIVISION OF HARVEY FOODS RE MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES LOCAL 647 AFFILIATED WITH T.C.W.H.....	162
SUNNYBROOK FOOD MARKET (KEELE) LIMITED RE R.C.I.A. AND N.C.C.L. L. 206 AND GROUP OF EMPLOYEES.....	165
TORONTO GENERAL HOSPITAL RE C.U.P.E.....	152
URBANDALE REALTY CORPORATION LIMITED RE C.J.A. L. 93.....	142
WELWYN CANADA LIMITED RE TOM RIGBY, GORDON CROCKFORD, INGRID MICHAELIS, BETTY McLAREN, ON BEHALF OF A GROUP OF EMPLOYEES OF WELWYN CANADA LIMITED AND L. 120 I.B.E.W....	174
WOMEN'S COLLEGE HOSPITAL RE C.U.P.E.....	142
W.W.M.L. L. 562, KENNETH WELLER & GUS SIMONE RE CARPENTERS' DISTRICT COUNCIL OF TORONTO AND VICINITY, ON BEHALF OF LOCAL UNION NOS. 27; 666; 681; 1133; 1747; 1963; 3227 AND 3233 OF CJA AND JACK CLINTON AND ANDY CLIFFORD.....	159

* TRADE UNION ABBREVIATIONS HAVE BEEN CITED FROM LABOUR ORGANIZATIONS
IN CANADA FIFTY-NINTH EDITION 1970.

INDEX OF CASES

- BARGAINING RIGHTS - RELATED EMPLOYER - EMPLOYEES - PRACTICE - S1(4) - JOINT VENTURE - WHETHER BOARD CRITERIA SATISFIED - WHETHER EMPLOYEES HERETOFORE REPRESENTED BY APPLICANT - DETERMINING THE EMPLOYER - WHETHER BARGAINING RIGHTS RETAINED - EXAMINERS INQUIRY - WHETHER EVIDENCE ADMISSIBLE AFTER INQUIRY - WHETHER FULL OPPORTUNITY AFFORDED PARTY AT EXAMINERS INQUIRY.
- INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 v. FOUNDATION-JANIN (A JOINT VENTURE)..... 137
- BARGAINING RIGHTS - S43(1)(2) - WHETHER APPLICANT, EVEN IF RESPONDENT CONTINUES TO BE A MEMBER OF AN EMPLOYER'S ASSOCIATION OR CEASED TO BE A MEMBER THEREOF, STILL HOLDS BARGAINING RIGHTS - WHETHER APPLICATION TERMINATED.
- LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 837 v. AIKEN, BARRON & ROEPKE LIMITED..... 157
- BARGAINING UNIT - EMPLOYEES - CHARGES - WHETHER EMPLOYEES IN WOODS OPERATIONS SHARE A COMMUNITY OF INTEREST WITH EMPLOYEES IN MILL OPERATIONS - WHETHER A SUFFICIENT DEGREE OF INTERDEPENDENCE - WHETHER TRUCK DRIVERS FALL WITHIN THE WOODS OR MILL OPERATIONS - ISSUE TO BE DETERMINED - WHETHER QUALITY CONTROL PERSONNEL FALL WITHIN THE BARGAINING UNIT OF EMPLOYEES ENGAGED IN WOODS OPERATIONS - S1(3)(B) - STATUS OF EMPLOYEES FALLING WITHIN THE CLASSIFICATION OF "LUMBER GRADERS" - WHETHER MANAGERIAL - S46 OF RULES - WHETHER CHARGES UNTIMELY WHERE INCUMBENT UPON BOARD TO ADJOURN THE PROCEEDINGS IN ANY EVENT.
- INTERNATIONAL WOODWORKERS OF AMERICA v. J. E. MARTEL & SONS LUMBER LIMITED v. GROUP OF EMPLOYEES..... 146
- BARGAINING UNIT - EMPLOYEES - DETERMINING THE EMPLOYER - WHETHER STATUTE CONTROLS THE EMPLOYMENT STATUS OF PERSONS CLAIMED TO BE IN THE EMPLOY OF THE RESPONDENT - EFFECT ON THE COMPOSITION OF THE BARGAINING UNIT.
- CANADIAN UNION OF PUBLIC EMPLOYEES v. BRACEBRIDGE WATER, LIGHT AND POWER COMMISSION..... 164
- BARGAINING UNIT - PRACTICE - AMENDMENT OF PROPOSED BARGAINING UNIT - WHETHER BOARD WILL GRANT LEAVE - WHETHER PARTY'S OBJECTION WELL FOUNDED.

RETAIL CLERKS INTERNATIONAL ASSOCIATION v. SUNNYBROOK
FOOD MARKET (KEELE) LIMITED v. LOCAL 206 NATIONAL COUN-
CIL OF CANADIAN LABOUR v. GROUP OF EMPLOYEES.....

165

BARGAINING UNIT - SCHOOL BOARD UNIT - WHETHER AUDIO-VISUAL
TECHNICIANS EMPLOYED BY RESPONDENT IN ITS SCHOOLS IN THE
GEOGRAPHICAL JURISDICTION OF THE RESPONDENT CONSTITUTE
AN APPROPRIATE TAG-END UNIT.

CANADIAN UNION OF PUBLIC EMPLOYEES v. THE NIPISSING
BOARD OF EDUCATION.....

173

CERTIFICATION - MEMBERSHIP EVIDENCE - PRACTICE - DOCUMENTARY
EVIDENCE - FAILURE OF CARDS TO INDICATE YEAR APPLICANT
TRADE UNION SIGNED MEMBERS - FAILURE OF TRADE UNION RE-
PRESENTATIVE TO ADDUCE EVIDENCE FROM PERSONAL KNOWLEDGE
OF ACCURATE DATE - WHETHER VALID EVIDENCE OF MEMBERSHIP
- S92(1) - FOUR DISMISSED APPLICATIONS FOR CERTIFICATION
IN PERIOD OF THREE MONTHS - EXTREME CIRCUMSTANCES -
WHETHER BOARD DISCRETION TO RAISE A BAR WILL BE EXERCISED.

RETAIL CLERKS INTERNATIONAL ASSOCIATION v. J. W. CROOKS
COMPANY, LIMITED CARRYING ON BUSINESS IN THE NAME OF
CROOKS REXALL PHARMACY AND TARGET DISCOUNT PHARMACY INC.
CARRYING ON BUSINESS IN THE NAME OF TARGET DISCOUNT PHAR-
MACY v. GROUP OF EMPLOYEES.....

126

CHARGES - BARGAINING UNIT - EMPLOYEES - WHETHER EMPLOYEES IN
WOODS OPERATIONS SHARE A COMMUNITY OF INTEREST WITH EM-
PLOYEES IN MILL OPERATIONS - WHETHER A SUFFICIENT DEGREE
OF INTERDEPENDENCE - WHETHER TRUCK DRIVERS FALL WITHIN
THE WOODS OR MILL OPERATIONS - ISSUE TO BE DETERMINED -
WHETHER QUALITY CONTROL PERSONNEL FALL WITHIN THE BAR-
GAINING UNIT OF EMPLOYEES ENGAGED IN WOODS OPERATIONS -
S1(3)(B) - STATUS OF EMPLOYEES FALLING WITHIN THE CLAS-
SIFICATION OF "LUMBER GRADERS" - WHETHER MANAGERIAL -
S47 OF RULES - WHETHER CHARGES UNTIMELY WHERE INCUMBENT
UPON BOARD TO ADJOURN THE PROCEEDINGS IN ANY EVENT.

INTERNATIONAL WOODWORKERS OF AMERICA v. J.E. MARTEL &
SONS LUMBER LIMITED v. GROUP OF EMPLOYEES.....

146

CHARGES - PROSECUTION - PRACTICE - S90 - NATURE OF PROCEED-
INGS - WHETHER APPLICANT HAS STATUS TO MAINTAIN APPLICA-
TION - WHETHER AN APPROPRIATE ALTERNATIVE REMEDY AVAIL-
ABLE - RELEVANCE OF PROCEDURES IN ANOTHER JURISDICTION
- CHARGES - WHETHER SUFFICIENT PARTICULARITY.

THE CARPENTERS' DISTRICT COUNCIL OF TORONTO AND VICINITY
ON BEHALF OF LOCAL UNION NOS. 27; 666; 681; 1133; 1747;
1963; 3227 AND 3233 OF THE UNITED BROTHERHOOD OF CARPEN-
TERS & JOINERS OF AMERICA AND JACK CLINTON AND ANDY CLIF-
FORD v. WOOD, WIRE & METAL LATHERS' INTERNATIONAL UNION
LOCAL 562, KENNETH WELLER & GUS SIMONE..... 159

CONSTRUCTION INDUSTRY - PRACTICE - APPROPRIATE UNIT - WHETHER
BOARD WILL VARY ITS NORMAL PRACTICE IN TERMS OF DESCRIB-
ING UNIT IN TERMS OF GEOGRAPHIC AREAS - S91(13) - WHETHER
HEARING WILL SERVE A USEFUL PURPOSE.

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL
UNION 120 v. FREEMAN ELECTRIC LIMITED..... 153

CONSTRUCTION INDUSTRY - PRACTICE - INTERVENER STATUS -
NO EMPLOYEES FOR WHOM INTERVENER ADDUCED EVIDENCE
REGARDING ITS CLAIM TO REPRESENTATION APPEARED ON
RESPONDENTS LISTS - RECORDS PRODUCED AT HEARING
APPEARED TO INDICATE THE CONTRARY - BOARD AUTHORIZED
THE APPOINTMENT OF AN EXAMINER WITH A VIEW TO RE-
SOLVE DISCREPANCY.

LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL
183 v. PERF CONSTRUCTION COMPANY v. OPERATIVE PLASTERERS'
AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE
UNITED STATES AND CANADA, LOCAL UNION # 172..... 124

EMPLOYEES - BARGAINING UNIT - DETERMINING THE EMPLOYER -
WHETHER STATUTE CONTROLS THE EMPLOYMENT STATUS OF PERSONS
CLAIMED TO BE IN THE EMPLOY OF THE RESPONDENT - EFFECT
ON THE COMPOSITION OF THE BARGAINING UNIT.

CANADIAN UNION OF PUBLIC EMPLOYEES v. BRACEBRIDGE WATER,
LIGHT AND POWER COMMISSION..... 164

EMPLOYEES - CHARGES - BARGAINING UNIT - WHETHER EMPLOYEES IN
WOODS OPERATIONS SHARE A COMMUNITY OF INTEREST WITH EM-
PLOYEES IN MILL OPERATIONS - WHETHER A SUFFICIENT DEGREE
OF INTERDEPENDENCE - WHETHER TRUCK DRIVERS FALL WITHIN
THE WOODS OR MILL OPERATIONS - ISSUE TO BE DETERMINED -
WHETHER QUALITY CONTROL PERSONNEL FALL WITHIN THE BAR-
GAINING UNIT OF EMPLOYEES ENGAGED IN WOODS OPERATIONS -
S1(3)(B) - STATUS OF EMPLOYEES FALLING WITHIN THE CLAS-
SIFICATION OF "LUMBER GRADERS" - WHETHER MANAGERIAL -
S47 OF RULES - WHETHER CHARGES UNTIMELY WHERE INCUMBENT
UPON BOARD TO ADJOURN THE PROCEEDINGS IN ANY EVENT.

INTERNATIONAL WOODWORKERS OF AMERICA v. J. E. MARTEL &
SONS LUMBER LIMITED v. GROUP OF EMPLOYEES.....

146

EMPLOYEES - PRACTICE - BARGAINING RIGHTS - RELATED EMPLOYER -
S1(4) - JOINT VENTURE - WHETHER BOARD CRITERIA SATISFIED
- WHETHER EMPLOYEES HERETOFORE REPRESENTED BY APPLICANT
- DETERMINING THE EMPLOYER - WHETHER BARGAINING RIGHTS
RETAINED - EXAMINERS INQUIRY - WHETHER EVIDENCE ADMIS-
SIBLE AFTER INQUIRY - WHETHER FULL OPPORTUNITY AFFORDED
PARTY AT EXAMINERS INQUIRY.

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 v.
FOUNDATION-JANIN (A JOINT VENTURE).....

137

EVIDENCE - PRACTICE - NATURE OF FIELD OFFICER'S REPORT IN S79
APPLICATION - THE PANEL OF THE BOARD WHICH HEARS THE
COMPLAINT NEVER REFERS TO THE FIELD OFFICER'S REPORT -
SUCH PANEL REACHES ITS DECISION SOLELY UPON THE EVIDENCE
ADDUCED BY THE PARTIES AT THE HEARING.

THE INTERNATIONAL BROTHERHOOD OF PAINTERS AND ALLIED
TRADES - LOCAL UNION 1783 v. FANSHAWE PAINTING LIMITED....

153

JURISDICTIONAL DISPUTE - IRON WORKERS AND LABOURERS - REMOVAL
OF PROTECTIVE COATING FROM STAINLESS STEEL EXTERIOR
PANELS AND WINDOW FRAMES - WORK ASSIGNED TO LABOURERS.

LONG BRANCH WINDOW AND METAL CLEANING LIMITED v. INTER-
NATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL
IRONWORKERS, LOCAL 721 AND LABOURERS INTERNATIONAL UNION
OF NORTH AMERICA, LOCAL 506.....

129

JURISDICTIONAL DISPUTE - WORK ASSIGNMENT - CHIPPING OF CON-
CRETE SUBFLOORING TO PREPARE FOR THE INSTALLATION OF
ELECTRICAL DUCT WORK - WHETHER LABOURERS OR ELECTRICIANS.

MASON-KIEWIT v. INTERNATIONAL BROTHERHOOD OF ELECTRICAL
WORKERS, LOCAL 353, AND LABOURERS INTERNATIONAL UNION OF
NORTH AMERICA, LOCAL 506.....

169

MEMBERSHIP EVIDENCE - CERTIFICATION - PRACTICE - DOCUMENTARY
EVIDENCE - FAILURE OF CARDS TO INDICATE YEAR APPLICANT
TRADE UNION SIGNED MEMBERS - FAILURE OF TRADE UNION RE-
PRESENTATIVE TO ADDUCE EVIDENCE FROM PERSONAL KNOWLEDGE
OF ACCURATE DATE - WHETHER VALID EVIDENCE OF MEMBERSHIP
- S92(1) - FOUR DISMISSED APPLICATIONS FOR CERTIFICATION
IN PERIOD OF THREE MONTHS - EXTREME CIRCUMSTANCES -
WHETHER BOARD DISCRETION TO RAISE A BAR WILL BE EXERCISED.

RETAIL CLERKS INTERNATIONAL ASSOCIATION v. J. W. CROOKS COMPANY, LIMITED CARRYING ON BUSINESS IN THE NAME OF CROOKS REXALL PHARMACY AND TARGET DISCOUNT PHARMACY INC. CARRYING ON BUSINESS IN THE NAME OF TARGET DISCOUNT PHARMACY v. GROUP OF EMPLOYEES.....	126
MEMBERSHIP EVIDENCE - PRACTICE - WHETHER DOCUMENTARY EVIDENCE OF MEMBERSHIP "STALE" - BOARD PRACTICE - DIRECTION ORDERING A REPRESENTATION VOTE.	
LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL #247 v. DALTON ENGINEERING AND CONSTRUCTION COMPANY.....	172
MEMBERSHIP - PRACTICE - DOCUMENTARY EVIDENCE - NON-PAY - FAILURE TO REPAY LOAN - FORM 8 - FAILURE TO MAKE DUE INQUIRY - WHETHER EVIDENCE OF MEMBERSHIP DISCOUNTED.	
S.E.U., LOCAL 204, AFFILIATED S.E.I.U., A.F.L., C.I.O., C.L.C. v. EXTENDICARE (CANADA) LIMITED v. CANADIAN UNION OF PUBLIC EMPLOYEES.....	122
MEMBERSHIP - PRACTICE - FORM 8 - FACTORS THE BOARD WEIGHS IN DETERMINING WHETHER A DECLARANT HAS MADE SUFFICIENT INQUIRY - WHETHER INQUIRIES MADE BY THE APPLICANT SATISFIED THE BOARD ONUS - EFFECT OF FAILURE TO SATISFY ONUS.	
CANADIAN UNION OF OPERATING ENGINEERS v. THE STANLEY STEEL COMPANY LIMITED v. UNITED STEELWORKERS OF AMERICA....	181
PRACTICE - BARGAINING UNIT - AMENDMENT OF PROPOSED BARGAINING UNIT - WHETHER BOARD WILL GRANT LEAVE - WHETHER PARTY'S OBJECTION WELL FOUNDED.	
RETAIL CLERKS INTERNATIONAL ASSOCIATION v. SUNNYBROOK FOOD MARKET (KEELE) LIMITED v. LOCAL 206 NATIONAL COUNCIL OF CANADIAN LABOUR v. GROUP OF EMPLOYEES.....	165
PRACTICE - BARGAINING RIGHTS - RELATED EMPLOYER - EMPLOYEES - S1(4) - JOINT VENTURE - WHETHER BOARD CRITERIA SATISFIED - WHETHER EMPLOYEES HERETOFORE REPRESENTED BY APPLICANT - DETERMINING THE EMPLOYER - WHETHER BARGAINING RIGHTS RETAINED - EXAMINERS INQUIRY - WHETHER EVIDENCE ADMISSIBLE AFTER INQUIRY - WHETHER FULL OPPORTUNITY AFFORDED PARTY AT EXAMINERS INQUIRY.	
INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 v. FOUNDATION-JANIN (A JOINT VENTURE).....	137

PRACTICE - CERTIFICATION - MEMBERSHIP EVIDENCE - DOCUMENTARY EVIDENCE - FAILURE OF CARDS TO INDICATE YEAR APPLICANT TRADE UNION SIGNED MEMBERS - FAILURE OF TRADE UNION REPRESENTATIVE TO ADDUCE EVIDENCE FROM PERSONAL KNOWLEDGE OF ACCURATE DATE - WHETHER VALID EVIDENCE OF MEMBERSHIP - S92(1) - FOUR DISMISSED APPLICATIONS FOR CERTIFICATION IN PERIOD OF THREE MONTHS - EXTREME CIRCUMSTANCES - WHETHER BOARD DISCRETION TO RAISE A BAR WILL BE EXERCISED.

RETAIL CLERKS INTERNATIONAL ASSOCIATION v. J. W. CROOKS COMPANY, LIMITED CARRYING ON BUSINESS IN THE NAME OF CROOKS REXALL PHARMACY AND TARGET DISCOUNT PHARMACY INC. CARRYING ON BUSINESS IN THE NAME OF TARGET DISCOUNT PHARMACY v. GROUP OF EMPLOYEES.....

126

PRACTICE - CHARGES - PROSECUTION - S90 - NATURE OF PROCEEDINGS - WHETHER APPLICANT HAS STATUS TO MAINTAIN APPLICATION - WHETHER AN APPROPRIATE ALTERNATIVE REMEDY AVAILABLE - RELEVANCE OF PROCEDURES IN ANOTHER JURISDICTION - CHARGES - WHETHER SUFFICIENT PARTICULARITY.

THE CARPENTERS' DISTRICT COUNCIL OF TORONTO AND VICINITY, ON BEHALF OF LOCAL UNION NOS. 27; 666; 681; 1133; 1747; 1963; 3227 AND 3233 OF THE UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA AND JACK CLINTON AND ANDY CLIFFORD v. WOOD, WIRE & METAL LATHERS' INTERNATIONAL UNION LOCAL 562, KENNETH WELLER & GUS SIMONE.....

159

PRACTICE - CONSTRUCTION INDUSTRY - APPROPRIATE UNIT - WHETHER BOARD WILL VARY ITS NORMAL PRACTICE IN TERMS OF DESCRIBING UNIT IN TERMS OF GEOGRAPHIC AREAS - S91(13) - WHETHER HEARING WILL SERVE A USEFUL PURPOSE.

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL UNION 120 v. FREEMAN ELECTRIC LIMITED.....

153

PRACTICE - CONSTRUCTION INDUSTRY - CONSTRUCTION INDUSTRY - INTERVENER STATUS - NO EMPLOYEES FOR WHOM INTERVENER ADDUCED EVIDENCE REGARDING ITS CLAIM TO REPRESENTATION APPEARED ON RESPONDENTS LISTS - RECORDS AT HEARING APPEARED TO INDICATE THE CONTRARY - BOARD AUTHORIZED THE APPOINTMENT OF AN EXAMINER WITH A VIEW TO RESOLVE DISCREPANCY.

LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 v. PERF CONSTRUCTION COMPANY v. OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, LOCAL UNION # 172.....

124

PRACTICE - EVIDENCE - NATURE OF FIELD OFFICER'S REPORT IN S79 APPLICATION - THE PANEL OF THE BOARD WHICH HEARS THE COMPLAINT NEVER REFERS TO THE FIELD OFFICER'S REPORT - SUCH PANEL REACHES ITS DECISION SOLELY UPON THE EVIDENCE ADDUCED BY THE PARTIES AT THE HEARING.	
THE INTERNATIONAL BROTHERHOOD OF PAINTERS AND ALLIED TRADES - LOCAL UNION 1783 v. FANSHAWE PAINTING LIMITED.....	153
PRACTICE - EXAMINER'S INQUIRY - REQUEST TO REOPEN INQUIRY SUBSEQUENT TO ITS CONCLUSION - WHETHER APPLICANT DENIED FULL OPPORTUNITY TO BE HEARD AND TO INTRODUCE EVIDENCE BEARING ON THE ISSUES BEFORE THE EXAMINER.	
UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 93 v. URBANDALE REALTY CORPORATION LIMITED.....	142
PRACTICE - MEMBERSHIP - DOCUMENTARY EVIDENCE - NON-PAY - FAILURE TO REPAY LOAN - FORM 8 - FAILURE TO MAKE DUE INQUIRY - WHETHER EVIDENCE OF MEMBERSHIP DISCOUNTED.	
S.E.U., LOCAL 204, AFFILIATED S.E.I.U., A.F.L., C.I.O., C.L.C., v. EXTENDICARE (CANADA) LIMITED v. CANADIAN UNION OF PUBLIC EMPLOYEES.....	122
PRACTICE - MEMBERSHIP EVIDENCE - WHETHER DOCUMENTARY EVIDENCE OF MEMBERSHIP "STALE" - BOARD PRACTICE - DIRECTION ORDERING A REPRESENTATION VOTE.	
LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL #247 v. DALTON ENGINEERING AND CONSTRUCTION COMPANY.....	172
PRACTICE - MEMBERSHIP - FORM 8 - FACTORS THE BOARD WEIGHS IN DETERMINING WHETHER A DECLARANT HAS MADE SUFFICIENT INQUIRY - WHETHER INQUIRIES MADE BY THE APPLICANT SATISFIED THE BOARD ONUS - EFFECT OF FAILURE TO SATISFY ONUS.	
CANADIAN UNION OF OPERATING ENGINEERS v. THE STANLEY STEEL COMPANY LIMITED v. UNITED STEELWORKERS OF AMERICA....	181
PRACTICE - S79 - COMPLAINT SADLY LACKING IN PARTICULARS - ALLEGED BREACH OF S60 - OPPORTUNITY RENDERED COMPLAINANT TO EXPLAIN POSITION - REGISTRAR DIRECTED TO LIST FOR HEARING.	
PERCY WOODS v. LOCAL 4912 OF THE UNITED STEEL WORKERS.....	121

PRACTICE - S79 - FAILURE OF COMPLAINANT TO APPEAR BEFORE A
FIELD OFFICE ALTHOUGH GIVEN EVERY OPPORTUNITY TO DO SO -
WHETHER BOARD WILL INQUIRE INTO COMPLAINT BY MEANS OF A
HEARING.

CANADIAN UNION OF PUBLIC EMPLOYEES v. TORONTO GENERAL
HOSPITAL.....

152

PRACTICE - S50(2) OF RULES - SERVICE OF DOCUMENTS - S102(1)
OF THE ACT - ORDINARY COURSE OF MAIL - WHETHER NOTICE OF
HEARING WAS PROPERLY SERVED ON A PARTY - EFFECT OF IN-
TERNAL DIFFICULTIES ARISING SUBSEQUENT TO PROPER SERVICE.

MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND
ALLIED EMPLOYEES LOCAL 647 AFFILIATED WITH THE INTERNA-
TIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN
& HELPERS OF AMERICA v. SWISS CHALET B-Q A DIVISION OF
HARVEY FOODS.....

162

PROCEDURE - S54 OF RULES - COLLECTIVE AGREEMENT EXECUTED
BETWEEN EMPLOYERS ASSOCIATION AND TRADE UNION - WHETHER
PROPER PARTIES TO THE PROCEEDINGS - BOARD DIRECTS PAR-
TIES BE ADDED.

INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND OR-
NAMENTAL IRONWORKERS, LOCAL 786 v. SENTINEL RELIANCE PRO-
DUCTS LIMITED v. ONTARIO ERECTORS ASSOCIATION v. INTER-
NATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMEN-
TAL WORKERS.....

141

PROSECUTION - PRACTICE - CHARGES - S90 - NATURE OF PROCEED-
INGS - WHETHER APPLICANT HAS STATUS TO MAINTAIN APPLICA-
TION - WHETHER AN APPROPRIATE ALTERNATIVE REMEDY AVAIL-
ABLE - RELEVANCE OF PROCEDURES IN ANOTHER JURISDICTION
- CHARGES - WHETHER SUFFICIENT PARTICULARITY.

THE CARPENTERS' DISTRICT COUNCIL OF TORONTO AND VICINITY,
ON BEHALF OF LOCAL UNION NOS. 27; 666; 681; 1133; 1747;
1963; 3227 AND 3233 OF THE UNITED BROTHERHOOD OF CARPEN-
TERS & JOINERS OF AMERICA AND JACK CLINTON AND ANDY CLIF-
FORD v. WOOD, WIRE & METAL LATHERS' INTERNATIONAL UNION
LOCAL 562, KENNETH WELLER & GUS SIMONE.....

159

RELATED EMPLOYER - EMPLOYEES - PRACTICE - BARGAINING RIGHTS -
S1(4) - JOINT VENTURE - WHETHER BOARD CRITERIA SATISFIED
- WHETHER EMPLOYEES HERETOFORE REPRESENTED BY APPLICANT
- DETERMINING THE EMPLOYER - WHETHER BARGAINING RIGHTS

RETAINED - EXAMINERS INQUIRY - WHETHER EVIDENCE ADMISSIBLE
AFTER INQUIRY - WHETHER FULL OPPORTUNITY AFFORDED PARTY
AT EXAMINERS INQUIRY.

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 v.
FOUNDATION-JANIN (A JOINT VENTURE)..... 137

RELIGIOUS OBJECTION - TRADE UNION - S39 - THE ISSUE BEFORE
THE BOARD - WHETHER THE APPLICANT OBJECTS TO JOINING
A TRADE UNION BASED ON PERSONAL CONVICTION AND BELIEF
- A SUBJECTIVE TEST - RELEVANCE OF COMPARATIVE STATUS
OF PERSONS BELONGING TO SAME CHURCH - RELEVANCE OF
POSITION OF CHURCH ON NEUTRAL TRADE UNIONS - WHETHER
SUPPORT OF CLAC DETRACTS FROM AUTHENTICITY OF CONVIC-
TION AND BELIEF - S12 - WHETHER UNION THAT STRESSES
ITS VIEWS ON CHRISTIANITY AND CAUSES MEMBERS TO TAKE
POSITION ON RELIGIOUS MATTERS A CERTIFIABLE ORGANIZA-
TION - CONCERNS OF BOARD EXPRESSED.

THEODORE HOGETERP v. INTERNATIONAL UNION, UNITED AUTO-
MOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF
AMERICA, (UAW), LOCAL 222 v. GENERAL MOTORS OF CANADA
LIMITED..... 132

REPRESENTATION VOTE - BOARD DISCRETION - S92(6) - WHETHER
BOARD WILL PERMIT "A NO UNION OPTION" IN A DISPLACE-
MENT SITUATION - CONSIDERATIONS AGAINST PRACTICE
RESTATED.

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 796 v.
CAMPEAU CORPORATION LIMITED v. CANADIAN CONSTRUCTION,
BUILDING MAINTENANCE AND GENERAL WORKERS' UNION, (N.C.
C.L.)..... 166

S79 - DISCHARGE CONTRARY TO THE ACT - WHETHER KNOWLEDGE OF
COMPLAINANT'S TRADE UNION ACTIVITIES CONCLUSIVE -
WHETHER DISCHARGE WAS FOR REASONS RELATING TO LACK OF
EXPERIENCE AND QUALIFICATION TO PERFORM JOB FUNCTION.

CANADIAN UNION OF PUBLIC EMPLOYEES v. WOMEN'S COLLEGE
HOSPITAL..... 142

S79 - PRACTICE - COMPLAINT SADLY LACKING IN PARTICULARS -
ALLEGED BREACH OF S60 - OPPORTUNITY RENDERED COMPLAINANT
TO EXPLAIN POSITION - REGISTRAR DIRECTED TO LIST FOR HEAR-
ING.

PERCY WOODS v. LOCAL 4912 OF THE UNITED STEEL WORKERS.....	121
S79 - PRACTICE - FAILURE OF COMPLAINANT TO APPEAR BEFORE A FIELD OFFICER ALTHOUGH GIVEN EVERY OPPORTUNITY TO DO SO - WHETHER BOARD WILL INQUIRE INTO COMPLAINT BY MEANS OF A HEARING.	
CANADIAN UNION OF PUBLIC EMPLOYEES v. TORONTO GENERAL EMPLOYEES	152
STRIKE - FAILURE TO SHOW UP FOR WORK - S1(1)(M) - WHETHER ACTIVITIES IN CONCERT OR IN ACCORDANCE WITH A COMMON UNDERSTANDING - S63(3) - A CONCILIATION OFFICER HAVING BEEN APPOINTED - WHETHER ACTIVITIES LAWFUL.	
THE CANADIAN LITHOGRAPHERS ASSOCIATION INC., COUNCIL OF PRINTING INDUSTRIES OF CANADA AND SOUTHAM MURRAY, A DIVISION OF THE SOUTHAM PRINTING COMPANY LIMITED v. ROBERT ALLAN, ET AL.....	168
TERMINATION - S49(2) - TIMELINESS - COLLECTIVE AGREEMENT ONCE EXPIRED SUBJECT TO AUTOMATIC RENEWAL FROM YEAR TO YEAR - WHETHER NOTICE TO REVISE AGREEMENT - EFFECT OF "OPEN SEASON" FOR PURPOSES OF ENTERTAINING APPLICATION.	
TOM RIGBY, GORDON CROCKFORD, INGRID MICHAELIS, BETTY McLAREN, ON BEHALF OF A GROUP OF EMPLOYEES OF WELWYN CANADA LIMITED v. LOCAL UNION 120 OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS AFL-CIO-CLC v. WELWYN CANADA LIMITED.....	174
TRADE UNION - RELIGIOUS OBJECTION - S39 - THE ISSUE BEFORE THE BOARD - WHETHER THE APPLICANT OBJECTS TO JOINING A TRADE UNION BASED ON PERSONAL CONVICTION AND BELIEF - A SUBJECTIVE TEST - RELEVANCE OF COMPARATIVE STATUS OF PERSONS BELONGING TO SAME CHURCH - RELEVANCE OF POSITION OF CHURCH ON NEUTRAL TRADE UNIONS - WHETHER SUPPORT OF CLAC DETRACTS FROM AUTHENTICITY OF CONVIC- TION AND BELIEF - S12 - WHETHER TRADE UNION STRESSES ITS VIEWS ON CHRISTIANITY AND CAUSES MEMBERS TO TAKE POSITION ON RELIGIOUS MATTERS A CERTIFIABLE ORGANIZA- TION - CONCERNS OF BOARD EXPRESSED.	
THEODORE HOGETERP v. INTERNATIONAL UNION, UNITED AUTO- MOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW), LOCAL 222 v. GENERAL MOTORS OF CANADA LIMITED.....	132

TRADE UNIONS - S1(1)(N) - PRESUMPTION THAT CHARTER ISSUED
LOCAL BY PARENT UNION - WHETHER EVIDENCE TO THE CONTRARY
- FAILURE OF MINUTES OF UNION MEETING TO INDICATE MINOR
OFFICERS WERE ELECTED IN ACCORDANCE WITH BY-LAWS - WHETHER
SUBSTANTIAL COMPLIANCE OF CHARTER AND BY-LAWS MET OF PUR-
POSES OF SATISFYING THE REQUIREMENTS OF S1(1)(N).

INSURANCE EMPLOYEES UNION, LOCAL 1668, C.L.C. v. ECO-
NOMICAL MUTUAL INSURANCE COMPANY.....

NOT WISH TO BE REPRESENTED BY A TRADE UNION. THE REQUEST OF COUNSEL FOR THE RESPONDENT ACCORDINGLY IS DENIED.

15. COUNSEL FOR THE APPLICANT CHALLENGED THE LIST OF EMPLOYEES FILED BY THE RESPONDENT. MR. H. C. DRAPER, EXAMINER, IS AUTHORIZED TO INQUIRE INTO AND REPORT TO THE BOARD ON THE LIST CONTAINING THE NAMES OF THE EMPLOYEES OF THE RESPONDENT FILED WITH THE BOARD IN CONNECTION WITH THIS APPLICATION.

1308-71-U: PERCY WOODS (COMPLAINANT) V. LOCAL 4912 OF THE UNITED STEEL WORKERS (RESPONDENT).

BEFORE: G. W. REED, Q.C., AND BOARD MEMBERS E. BOYER AND F. W. MURRAY.

DECISION OF THE BOARD: JANUARY 25, 1972.

1. THIS IS A COMPLAINT UNDER SECTION 79 OF THE LABOUR RELATIONS ACT IN WHICH THE COMPLAINANT, WHO IS ALSO THE GRIEVOR, ALLEGES THAT HE HAS BEEN DEALT WITH BY THE RESPONDENT CONTRARY TO SECTION 60 OF THE ACT. THE BOARD APPOINTED A FIELD OFFICER, WHO HAS NOW SUBMITTED HIS REPORT TO THE BOARD.

2. THE COMPLAINT OF THE GRIEVOR IS IN ESSENCE A COMPLAINT THAT THE RESPONDENT FAILED TO HELP HIM IN CONNECTION WITH A WORKMAN'S COMPENSATION CLAIM. THE COMPLAINT IS SADLY LACKING IN PARTICULARS AND, FURTHERMORE, CORRESPONDENCE FILED WITH THE FIELD OFFICER BY THE RESPONDENT INDICATES THAT THE RESPONDENT WAS INDEED MOST ACTIVE IN ITS EFFORTS TO ASSIST THE COMPLAINANT. IN SUCH CIRCUMSTANCES, THE BOARD MIGHT WELL HAVE DECLINED TO INQUIRE FURTHER INTO THE COMPLAINT BY MEANS OF A HEARING.

3. HOWEVER, THE DUTY OF FAIR REPRESENTATION AS CONTAINED IN SECTION 60 OF THE ACT IS A RELATIVELY NEW ONE AND, TO DATE, THE BOARD HAS NOT HAD OCCASION TO DEVELOP ANY PRINCIPLES AND PRECEDENTS ON THE MATTER. FURTHERMORE, IN DEALING WITH CERTAIN TYPES OF COMPLAINTS UNDER SECTION 79, THE BOARD HAS FROM TIME TO TIME FOUND IT HELPFUL TO ALL CONCERNED TO GIVE A COMPLAINT AN OPPORTUNITY TO EXPLAIN HIS POSITION IN PERSON BEFORE THE BOARD. IT SEEMS TO US THAT THE PRESENT COMPLAINT FALLS INTO THIS CATEGORY.

4. IN THESE CIRCUMSTANCES, THE REGISTRAR IS DIRECTED TO LIST THIS COMPLAINT FOR HEARING IN KINGSTON, ONTARIO, IN ORDER TO ENABLE THE COMPLAINANT TO SHOW CAUSE WHY THE BOARD SHOULD PROCEED TO INQUIRE FURTHER INTO THE COMPLAINT BY MEANS OF A HEARING.

1019-71-R: S.E.U., Local 204, AFFILIATED S.E.I.U., A.F.L., C.I.O., C.L.C. (APPLICANT) v. EXTENDICARE (CANADA) LIMITED (RESPONDENT) v. CANADIAN UNION OF PUBLIC EMPLOYEES (INTERVENER).

BEFORE: FRANK V. BOSCARIOL, VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND F. W. MURRAY.

DECISION OF THE BOARD:

FEBRUARY 1, 1972.

1. AT THE CONTINUATION OF HEARING ON NOVEMBER 22, 1971, THE BOARD ENTERTAINED EVIDENCE CONCERNING THE ALLEGATION OF NON-PAY AGAINST S.E.U., LOCAL 204, AFFILIATED S.E.I.U., A.F.L., C.I.O., C.L.C. (HEREINAFTER REFERRED TO AS SEU), INVOLVING THE APPLICATION FOR MEMBERSHIP OF DONNA ROWSELL.

2. THE EVIDENCE OF DONNA ROWSELL DISCLOSES THAT SHE IS EMPLOYED BY THE RESPONDENT AS KITCHEN HELP, AND THAT SHE SIGNED AN APPLICATION FOR MEMBERSHIP IN SEU ON SEPTEMBER 30, 1971, IN THE COOK'S OFFICE ON THE PREMISES OF THE RESPONDENT IN THE PRESENCE OF JEFF SWEETING. SHE INFORMED HIM AT THIS TIME SHE HAD NO MONEY, WHEREUPON SWEETING VOLUNTEERED TO LOAN HER THE DOLLAR. SHE ACCEPTED AND AGREED TO PAY IT BACK ON PAY-DAY. WHEN SWEETING REQUESTED REPAYMENT SOME TWO DAYS PRIOR TO HER PAY-DAY, SHE REFUSED TO DO SO AND SHE HAS NOT AT ANY TIME SUBSEQUENTLY, PAID OVER THE DOLLAR TO HIM.

3. ALTHOUGH COUNSEL FOR SEU CONCEDES THAT DONNA ROWSELL'S CARD BE DISCOUNTED IN THESE CIRCUMSTANCES, IT IS SUBMITTED THAT THE BOARD MUST, NEVERTHELESS, GIVE EFFECT TO THE REMAINING EVIDENCE OF MEMBERSHIP FILED BY SEU. IT IS ON THIS POINT THAT THE EVIDENCE OF JEFF SWEETING BECOMES MATERIAL.

4. JEFF SWEETING'S TESTIMONY REVEALS, INTER ALIA, THAT HE IS A MAINTENANCE EMPLOYEE OF THE RESPONDENT. HE WAS NOT TOO FAMILIAR WITH UNIONS AND THIS WAS HIS FIRST EXPERIENCE IN AN ORGANIZATIONAL CAMPAIGN. HE RECEIVED NO INSTRUCTION UPON BEING AUTHORIZED TO ACT ON BEHALF OF SEU AS A COLLECTOR. IN THIS REGARD, HIS ONLY CONTACT WAS WITH ONE JOE GILL, WHOM HE TURNED OVER THE PROCEEDS FOLLOWING HIS COLLECTION ACTIVITIES. AT NO TIME WERE INQUIRIES MADE OF THIS WITNESS. A REVIEW OF THE CARDS FILED BY SEU WITH THE BOARD REVEALS THAT THE MAJORITY OF THEM BEAR SWEETING'S SIGNATURE IN HIS CAPACITY AS COLLECTOR.

5. THE FORM 8 DOCUMENT FILED ON BEHALF OF SEU IN THESE PROCEEDINGS IS SWORN TO BY J. H. NICHOLLS. ITEM #3 THEREOF PROVIDES:

"(WHERE THE DOCUMENTARY EVIDENCE CONSISTS
IN PART OF RECEIPTS OR OTHER ACKNOWLEDGMENTS

OF THE PAYMENT ON ACCOUNT OF DUES OR INITIATION FEES) ON THE BASIS OF MY PERSONAL KNOWLEDGE AND INQUIRIES THAT I HAVE MADE, I STATE THAT THE PERSONS WHOSE NAMES APPEAR ON THE RECEIPTS OR OTHER ACKNOWLEDGMENTS OF THE PAYMENT ON ACCOUNT OF DUES OR INITIATION FEES ARE THE PERSONS WHO ACTUALLY COLLECTED THE MONEYS PAID ON ACCOUNT OF DUES OR INITIATION FEES AND THAT EACH MEMBER, ON WHOSE BEHALF A RECEIPT OR AN ACKNOWLEDGMENT OF PAYMENT IS SUBMITTED HAS PERSONALLY PAID IN MONEY THE AMOUNT SHOWN THEREON ON HIS OWN BEHALF TO THE PERSON WHOSE NAME APPEARS ON HIS RECEIPT OR ACKNOWLEDGMENT OF PAYMENT AS COLLECTOR, EXCEPT IN THE FOLLOWING INSTANCES:"

NO "INSTANCES" ARE IN FACT DISCLOSED IN THE SPACE PROVIDED FOR IN THE DOCUMENT, AND THIS PORTION IS LEFT BLANK.

6. WHEN BOARD MEMBER MURRAY PUT TO COUNSEL FOR SEU THE QUESTION CONCERNING THE IMPLICATIONS TO BE DRAWN FROM THE FAILURE OF JOE GILL TO MAKE INQUIRIES OF SWEETING UPON RECEIVING THE PROCEEDS FROM HIM, AS REGARDS THE VALIDITY OF THE "FORM 8" DOCUMENT FILED IN THESE PROCEEDINGS, COUNSEL TOOK THE POSITION THAT HE DID NOT HAVE TO MEET THIS ISSUE.

7. IN OUR OPINION, THE FAILURE OF JOE GILL TO MAKE INQUIRIES IN THESE CIRCUMSTANCES IS FATAL IN THAT WE ARE NOT SATISFIED THAT THERE HAS BEEN COMPLIANCE WITH THE REQUIREMENTS OF ITEM #3 OF THE FORM 8 DOCUMENT. AS WAS STATED BY THE BOARD IN THE NATIONAL STEEL CAR CORPORATION LIMITED CASE OLRB M.R. JANUARY 1966 PAGE 738 AT PAGE 741:

"IT IS READILY APPARENT THAT A PERSON COMPLETING FORM 9 (NOW FORM 8) MUST BE SEIZED WITH SOME TYPE OF KNOWLEDGE IN ORDER TO SATISFY THE REQUIREMENTS OF ITEM 3 CITED ABOVE. THIS KNOWLEDGE MAY BE PERSONAL KNOWLEDGE (I.E.) KNOWLEDGE GAINED BY EITHER ACTING AS THE ACTUAL COLLECTOR OR KNOWLEDGE GAINED BY BEING PERSONALLY PRESENT AND ACTUALLY WITNESSING THE TRANSACTION BETWEEN THE COLLECTOR AND THE MEMBER WHEREIN THE MEMBERSHIP CARD WAS SIGNED AND PAYMENT OF MONEY MADE BY THE MEMBER TO THE COLLECTOR.

THE OTHER TYPE OF KNOWLEDGE WHICH IS ACCEPTABLE IS THAT KNOWLEDGE GAINED FROM INQUIRIES MADE OF THE PERSONS WHO ACTUALLY ACTED AS COLLECTORS, OR THE PERSONS WHO MADE THE NECESSARY INQUIRIES OF THE ACTUAL COLLECTORS.

THE REQUIREMENT THAT INQUIRIES BE MADE IS OBVIOUSLY NOT AN ONEROUS ONE OR ONE THAT IMPOSES AN UNDUE BURDEN ON THE APPLICANT; HOWEVER, THE REQUIREMENT IS THAT INQUIRIES BE MADE."

THE BOARD, IN THAT CASE, FURTHER QUOTED WITH APPROVAL THE DECISION IN THE VALLEY TRANSPORTATION COMPANY LIMITED CASE OLRB M.R. JUNE 1964 PAGE 140, WHEREIN IT WAS STATED:

"THE BOARD MUST EXPECT AND INSIST THAT PERSONS WHO FILE APPLICATIONS FOR MEMBERSHIP CARDS AND RECEIPTS AND FORM 9 (NOW FORM 8) AS EVIDENCE OF MEMBERSHIP, TAKE ALL NECESSARY PRECAUTIONS AND CARE TO ENSURE THAT THE INFORMATION CONTAINED THEREIN IS TRUE AND ACCURATE. THE BOARD IS ENTITLED TO DEMAND THE HIGHEST STANDARDS OF INTEGRITY, DISCLOSURE, AND ACCURACY ON THE PART OF THOSE WHO SUBMIT SUCH EVIDENCE AND WHERE UNDISCLOSED INACCURACIES OF MATERIAL FACTS ARE LATER BROUGHT TO ITS ATTENTION, TO TAKE A STRICT VIEW OF THEM."

8. IN THE RESULT THEREFORE, WE FIND THAT ALL OF THE CARDS SIGNED BY SWEETING IN HIS CAPACITY AS COLLECTOR, ARE NOT ACCEPTABLE TO THE BOARD. SINCE THE EVIDENCE OF MEMBERSHIP OF SEU IS ACCORDINGLY REDUCED TO BELOW THE 35% LEVEL REQUIRED FOR A REPRESENTATION VOTE, THE APPLICATION OF SEU IS THEREFORE DISMISSED.

522-71-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) v. PERF CONSTRUCTION COMPANY (RESPONDENT) v. OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, LOCAL UNION # 172 (INTERVENER).

BEFORE: R.A. FURNESS, VICE CHAIRMAN AND BOARD MEMBERS F.W. MURRAY AND P.J. O'KEEFFE.

APPEARANCES AT THE HEARING: A.M. MINSKY AND RAYMOND KOSKIE FOR THE APPLICANT; JOSEPH BREGLIA FOR THE RESPONDENT; AUBREY E. GOLDEN, DAVID ESTRIN AND ANTHONY MARIANO FOR THE INTERVENER.

DECISION OF THE BOARD: FEBRUARY 1, 1972.

1. IN THIS APPLICATION FOR CERTIFICATION THE INTERVENER ATTEMPTED

TO ESTABLISH ITS STATUS TO INTERVENE IN THIS APPLICATION BY INTRODUCING EVIDENCE THAT IT REPRESENTED EMPLOYEES AFFECTED BY THIS APPLICATION. AT THE TIME OF THE HEARING IN THIS MATTER, THE RESPONDENT HAD NOT FILED A LIST OF EMPLOYEES. SUBSEQUENT TO THE HEARING IN THIS MATTER, THE RESPONDENT FILED A LIST OF EMPLOYEES CONTAINING TWO NAMES. HOWEVER, NONE OF THE EMPLOYEES FOR WHOM THE INTERVENER ADDUCED EVIDENCE REGARDING ITS CLAIM TO REPRESENT THEM APPEARED ON THE LIST OF EMPLOYEES FILED BY THE RESPONDENT.

2. IT APPEARS TO THE BOARD THAT RECORDS PRODUCED BEFORE IT AT THE HEARING IN THIS MATTER INDICATED THAT CERTAIN EMPLOYEES WHOM THE INTERVENER CLAIMED TO REPRESENT WERE IN THE EMPLOY OF THE RESPONDENT ON THE DATE OF THE MAKING OF THIS APPLICATION FOR CERTIFICATION. THERE IS APPARENTLY A DISCREPANCY BETWEEN THE NAMES WHICH APPEAR ON THE LIST OF EMPLOYEES FILED BY THE RESPONDENT AND THE LIST OF EMPLOYEES WITH RESPECT TO WHOM THE INTERVENER ADDUCED EVIDENCE IN SUPPORT OF ITS CLAIM TO INTERVENE IN THIS APPLICATION.

3. MR. D.K. AYNLEY, EXAMINER, IS AUTHORIZED TO INQUIRE INTO AND REPORT TO THE BOARD ON, (A) THE LIST OF PERSONS IN THE EMPLOY OF THE RESPONDENT IN REGULAR BOARD GEOGRAPHIC AREA No. 8 ON THE DATE OF THE MAKING OF THIS APPLICATION AND THEIR OCCUPATIONAL CLASSIFICATIONS, AND (B) THE DATES ON WHICH

PIETRO AGUANNO

SALVATORE AVARINO

GERARDO CICCORITTI

CORNELIO CECE

DIVINANGELO DICARLO

ALDO GAROFALO

CORRADO SCALA

GUERRINO INTINI

WERE IN THE EMPLOY OF THE RESPONDENT IN REGULAR BOARD GEOGRAPHIC AREA No. 8.

1392-71-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. J. W. CROOKS COMPANY, LIMITED CARRYING ON BUSINESS IN THE NAME OF CROOKS REXALL PHARMACY AND TARGET DISCOUNT PHARMACY INC. CARRYING ON BUSINESS IN THE NAME OF TARGET DISCOUNT PHARMACY (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS O. HODGES AND J.E.C. ROBINSON, Q.C.

APPEARANCES AT THE HEARING: HAROLD G. JURCHUK FOR THE APPLICANT, R. E. ZELINSKI, Q.C., AND G. I. CROOKS FOR THE RESPONDENT, B. B. TREMBLEY FOR THE OBJECTORS.

DECISION OF THE BOARD: FEBRUARY 1, 1972.

1. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(N) OF THE LABOUR RELATIONS ACT.

2. THE NAME OF THE RESPONDENT APPEARING IN THE STYLE OF CAUSE OF THIS APPLICATION IS AMENDED TO READ: "J. W. CROOKS COMPANY, LIMITED CARRYING ON BUSINESS IN THE NAME OF CROOKS REXALL PHARMACY AND TARGET DISCOUNT PHARMACY INC. CARRYING ON BUSINESS IN THE NAME OF TARGET DISCOUNT PHARMACY".

3. COUNSEL FOR THE RESPONDENT ADVISED THE BOARD THAT THE BUSINESSES OF J. W. CROOKS COMPANY, LIMITED AND TARGET DISCOUNT PHARMACY INC. ARE CARRIED ON UNDER COMMON DIRECTION AND CONTROL. THE SAID TWO COMPANIES ACCORDINGLY WILL BE TREATED AS ONE EMPLOYER FOR PURPOSES OF THE ACT.

4. HAVING REGARD TO THE AGREEMENT OF THE PARTIES, THE BOARD FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT THUNDER BAY, SAVE AND EXCEPT ASSISTANT MANAGERS, PERSONS ABOVE THE RANK OF ASSISTANT MANAGER, PHARMACISTS, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

5. THE NUMBER OF EMPLOYEES ON THE LIST FILED BY THE RESPONDENT WHO ARE INCLUDED IN THE BARGAINING UNIT FOR PURPOSES OF THE COUNT TOTALS 52. THE APPLICANT SUBMITTED EVIDENCE OF MEMBERSHIP FOR 19 PERSONS WHOSE NAMES CORRESPOND TO THOSE ON THE SAID LIST FILED BY THE RESPONDENT. THE EVIDENCE OF MEMBERSHIP TAKES THE FORM OF COMBINATION APPLICATIONS FOR MEMBERSHIP AND RECEIPTS. THE APPLICATION PORTIONS BEAR THE ORIGINAL SIGNATURES OF THE APPLICANTS AND THE RECEIPT PORTIONS ARE COUNTERSIGNED BY THE APPLICANTS AND INDICATE THE PAYMENT OF A ONE DOLLAR INITIATION FEE IN EACH CASE. TWO OF THE SAID COMBINATION APPLICATIONS FOR MEMBERSHIP AND RECEIPT FORMS BEAR THE

DAY AND MONTH ON WHICH THE APPLICATIONS WERE SIGNED BUT NO YEAR IS SHOWN. ONE COMBINATION APPLICATION AND RECEIPT FORM BEARS NO DATE WHATSOEVER. THE REPRESENTATIVE OF THE APPLICANT AT THE HEARING HAD NO PERSONAL KNOWLEDGE AS TO THE PERIOD DURING WHICH THE ORGANIZING CAMPAIGN OF THE APPLICANT TOOK PLACE AMONG THE EMPLOYEES OF THE RESPONDENT.

6. HAVING REGARD TO THE FACT THAT THERE IS NO EVIDENCE BEFORE THE BOARD AS TO WHEN THE ABOVE THREE REFERRED TO COMBINATION APPLICATIONS FOR MEMBERSHIP AND RECEIPTS WERE SIGNED, THE BOARD IS UNABLE TO CONCLUDE THAT THE APPLICATIONS WERE SIGNED AND THAT ONE DOLLAR INITIATION FEE WAS PAID WITHIN A PERIOD OF ONE YEAR IMMEDIATELY PRECEDING THE TERMINAL DATE OF THIS APPLICATION. THE EVIDENCE OF MEMBERSHIP SUBMITTED FOR THE THREE PERSONS CONCERNED THEREFORE DOES NOT SATISFY THE BOARD'S REQUIREMENTS. THE BOARD ACCORDINGLY IS NOT PREPARED TO GIVE WEIGHT TO THE SAID THREE COMBINATION APPLICATIONS FOR MEMBERSHIP AND RECEIPTS IN DETERMINING THE MEMBERSHIP POSITION OF THE APPLICANT (SEE KAWNEER INSTALLATIONS LIMITED CASE OLRB M.R. OCTOBER 1971 P.674).

7. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT LESS THAN THIRTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON DECEMBER 30, 1971, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 92(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

8. THE APPLICATION ACCORDINGLY IS DISMISSED.

9. COUNSEL FOR THE RESPONDENT AND COUNSEL FOR A GROUP OF EMPLOYEE OBJECTORS SUBMIT THAT HAVING REGARD TO THE FACT THAT THE INSTANT APPLICATION IS THE FOURTH UNSUCCESSFUL APPLICATION MADE BY THE APPLICANT FOR THE SAME UNIT OF EMPLOYEES OF THE RESPONDENT WITHIN A THREE MONTH PERIOD, THE BOARD SHOULD PLACE A BAR UPON THE APPLICANT MAKING A FURTHER APPLICATION FOR CERTIFICATION FOR THE EMPLOYEES CONCERNED.

10. ON SEPTEMBER 11, 1971, THE APPLICANT APPLIED FOR CERTIFICATION AS BARGAINING AGENT FOR THE EMPLOYEES OF CROOKS REXALL PHARMACY AT THUNDER BAY SAVE AND EXCEPT ASSISTANT MANAGERS, PERSONS ABOVE THE RANK OF ASSISTANT MANAGER, AND PHARMACISTS. THE APPLICANT REQUESTED THAT A PRE-HEARING REPRESENTATION VOTE BE TAKEN AMONG THE EMPLOYEES IN SUCH VOTING CONSTITUENCY AS THE BOARD DETERMINED. BY A DECISION DATED SEPTEMBER 15, 1971, THE BOARD APPOINTED AN EXAMINER TO CONFER WITH THE PARTIES FOR THE PURPOSE OF ARRANGING FOR THE TAKING OF A PRE-HEARING REPRESENTATION VOTE. BY LETTER DATED SEPTEMBER 17, 1971,

THE APPLICANT REQUESTED LEAVE OF THE BOARD TO WITHDRAW ITS APPLICATION AND AS OF THE SAME DATE FILED A NEW APPLICATION. HAVING REGARD TO THE REQUEST OF THE APPLICANT, BY A DECISION DATED SEPTEMBER 20, 1971, THE APPLICATION DATED SEPTEMBER 11, 1971 WAS WITHDRAWN BY LEAVE OF THE BOARD. THE SECOND APPLICATION OF THE APPLICANT WHICH WAS FILED WITH THE BOARD ON SEPTEMBER 18, 1971 WAS FOR THE SAME UNIT OF EMPLOYEES OF CROOKS REXALL PHARMACY AS THE EARLIER APPLICATION. THERE WERE FILED WITH THE BOARD STATEMENTS OF DESIRE BY A GROUP OF EMPLOYEES EXPRESSING OPPOSITION TO THE SECOND APPLICATION. SUBSEQUENT TO A HEARING OF THE APPLICATION ON OCTOBER 13, 1971, BY A DECISION OF THE SAME DATE, THE BOARD APPOINTED AN EXAMINER TO INQUIRE INTO AND REPORT ON THE LIST OF EMPLOYEES FILED BY THE RESPONDENT. BY A MEMORANDUM DATED OCTOBER 27, 1971, THE EXAMINER RECORDED THE AGREEMENT MADE BY THE PARTIES WITH RESPECT TO THE LIST OF EMPLOYEES FILED BY THE RESPONDENT. BY LETTER DATED OCTOBER 27, 1971, THE APPLICANT REQUESTED LEAVE OF THE BOARD TO WITHDRAW ITS APPLICATION. HAVING REGARD TO THE STAGE AT WHICH THE APPLICANT MADE ITS REQUEST, THE BOARD BY A DECISION DATED OCTOBER 28, 1971 DISMISSED THE APPLICATION. ON DECEMBER 4, 1971, THE APPLICANT FILED A THIRD APPLICATION FOR CERTIFICATION FOR ALL OF THE EMPLOYEES OF CROOKS REXALL PHARMACY AND TARGET DISCOUNT PHARMACY AT THUNDER BAY, SAVE AND EXCEPT MANAGERS, ASSISTANT MANAGERS AND PHARMACISTS AND PERSONS ABOVE THOSE RANKS AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK. STATEMENTS OF DESIRE EXPRESSING OPPOSITION TO THE APPLICATION WERE FILED ON BEHALF OF A GROUP OF EMPLOYEE OBJECTORS. BY LETTER WHICH WAS RECEIVED BY THE BOARD ON DECEMBER 17, 1971, THE APPLICANT REQUESTED LEAVE OF THE BOARD TO WITHDRAW ITS APPLICATION. BY A DECISION DATED DECEMBER 17, 1971, THE SAID APPLICATION WAS WITHDRAWN BY LEAVE OF THE BOARD. ON DECEMBER 15, 1971, THE INSTANT APPLICATION WAS FILED BY THE APPLICANT FOR THE SAME UNIT OF EMPLOYEES AS IT HAD APPLIED FOR IN THE PRECEDING APPLICATION. THE HEARING ON THE APPLICATION WAS HELD ON JANUARY 11, 1972.

11. BY WAY OF SUMMARY, BETWEEN SEPTEMBER 11 AND DECEMBER 15, 1971, THE APPLICANT FILED FOUR APPLICATIONS FOR CERTIFICATION. THE FIRST TWO APPLICATIONS WERE FOR A UNIT OF EMPLOYEES OF CROOKS REXALL PHARMACY AND THE SECOND TWO APPLICATIONS WERE FOR A UNIT OF EMPLOYEES OF CROOKS REXALL PHARMACY AND TARGET DISCOUNT PHARMACY. THE FIRST AND THIRD APPLICATIONS WERE WITHDRAWN BY LEAVE OF THE BOARD. THE SECOND APPLICATION WAS DISMISSED FOLLOWING A HEARING OF THE APPLICATION AND A REPORT BEING MADE BY AN EXAMINER. THE FOURTH AND INSTANT APPLICATION IS BEING DISMISSED HAVING REGARD TO THE FACT AND THE APPLICANT HAS SUBMITTED ACCEPTABLE EVIDENCE OF MEMBERSHIP FOR LESS THAN THIRTY-FIVE PER CENT OF THE EMPLOYEES IN THE BARGAINING UNIT. WE WOULD MENTION THAT THE HEARINGS ON THE SECOND AND FOURTH APPLICATIONS WERE HELD IN TORONTO AND IN BOTH CASES THE RESPONDENT AND THE GROUP OF EMPLOYEES OBJECTORS WERE REPRESENTED BY PERSONS WHO TRAVELLED FROM THUNDER BAY.

12. IN LIGHT OF THE SPECIAL AND EXTREME CIRCUMSTANCES CONFRONTING THE BOARD, THAT IS, THE FACT OF FOUR UNSUCCESSFUL APPLICATIONS BEING MADE BY THE APPLICANT WITHIN A PERIOD OF LITTLE MORE THAN THREE MONTHS FOR BARGAINING UNITS COMPOSED OF THE SOME OR SOME OF THE SAME EMPLOYEES, THE BOARD, IN THE EXERCISE OF ITS DISCRETION UNDER SECTION 92(2)(1) OF THE ACT, DEEMS IT ADVISABLE AND HEREBY PLACES A BAR UPON THE APPLICANT MAKING A FURTHER APPLICATION FOR CERTIFICATION FOR THE EMPLOYEES OF THE RESPONDENT WHO ARE THE SUBJECT OF THE INSTANT APPLICATION FOR A PERIOD OF SIX MONTHS FROM THE DATE OF THE DISMISSAL OF THE INSTANT APPLICATION.

1149-71-JD: LONG BRANCH WINDOW AND METAL CLEANING LIMITED (COMPLAINANT) V. INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL 721 AND LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (RESPONDENTS).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS A. MAIN AND F. W. MURRAY.

APPEARANCES AT THE HEARING: R. D. PERKINS AND PAUL SZYMCHUK FOR THE COMPLAINANT; A. GOLDEN AND A. MACISAAC FOR IRONWORKERS LOCAL 721; H. MINSKY, R. KOSKIE AND T. NEIL FOR LABOURERS LOCAL 506.

DECISION OF THE BOARD: FEBRUARY 1, 1972.

1. THIS IS A COMPLAINT MADE UNDER SECTION 81 OF THE LABOUR RELATIONS ACT.

2. THE WORK IN DISPUTE IS THE REMOVAL OF A PROTECTIVE FERRAMID FABRIC PROTECTIVE COATING FROM THE STAINLESS STEEL EXTERIOR PANELS AND WINDOW FRAMES WHICH ARE BEING INSTALLED ON THE COMMERCE COURT CONSTRUCTION PROJECT IN THE CITY OF TORONTO. THE SAID COATING CONSISTS OF A CENTRE CORE OF GAUZE-LIKE FIBERGLASS FABRIC COVERED BY NUMEROUS LAYERS OF LIQUID POLYESTER MATERIAL KNOWN AS FERRAMID. THE COMMERCE COURT IS THE FIRST BUILDING PROJECT ON WHICH THE FERRAMID FABRIC SUBSTANCE HAS BEEN USED AS A PROTECTIVE COATING.

3. KAWNEER CO. OF CANADA LTD. (HEREINAFTER REFERRED TO AS KAWNEER) FABRICATED THE STAINLESS STEEL EXTERIOR WALL PANELS AND WINDOWS BEING USED ON THE COMMERCE COURT PROJECT AND HAS BEEN INSTALLING THE SAID PANELS AND WINDOWS ON THE THREE-BUILDING COMPLEX. KAWNEER HAS A COLLECTIVE AGREEMENT WITH THE RESPONDENT IRONWORKERS LOCAL 721 AND IRONWORKERS IN THE EMPLOY OF KAWNEER HAVE BEEN DOING THE INSTALLATION WORK. UNDER A SUBCONTRACT FROM KAWNEER, THE COMPLAINANT APPLIED THE FERRAMID FABRIC PROTECTIVE COATING TO THE STAINLESS STEEL EXTERIOR WALL PANELS AND WINDOW FRAMES PRIOR TO THEIR INSTALLATION USING LA-

BOURERS TO DO THE WORK. KAWNEER ALSO SUBCONTRACTED TO THE COMPLAINANT THE WORK OF REMOVING THE COATING FROM THE SAID PANELS AND WINDOW FRAMES AFTER THEIR INSTALLATION AND AS WELL THE WORK OF CLEANING THE STAINLESS STEEL PANELS AND WINDOWS INCLUDING NOT ONLY THE FRAMES BUT ALSO THE GLASS IN THE WINDOWS.

4. THE COMPLAINANT HAS BEEN A PARTY TO A SERIES OF COLLECTIVE AGREEMENTS WITH THE RESPONDENT LABOURERS LOCAL 506 FROM 1963 TO THE PRESENT TIME. THE COMPLAINANT HAS ALSO BEEN A PARTY TO A SERIES OF COLLECTIVE AGREEMENTS WITH THE IRONWORKERS LOCAL 721 SINCE 1965 TO THE PRESENT. PAUL SZYMCZUK, THE PRESIDENT OF THE COMPLAINANT, TESTIFIED THAT HE ORIGINALLY ENTERED INTO A COLLECTIVE BARGAINING RELATIONSHIP WITH THE IRONWORKERS LOCAL 721 WHEN HE TOOK OVER A CONTRACT FROM ANOTHER COMPANY FOR THE INSTALLATION OF SOME WINDOWS ON THE ONTARIO GOVERNMENT'S BUILDING COMPLEX AT QUEEN'S PARK FOR A PERIOD OF SIX MONTHS. ACCORDING TO HIS TESTIMONY, THE CONTRACT WAS PERFORMED BY A RELATED COMPANY, LONG BRANCH ERECTORS, AND THE INSTALLATION WORK WAS DONE BY IRONWORKERS IN THE EMPLOY OF THAT COMPANY. THE EVIDENCE OF SZYMCZUK IS THAT THE COMPLAINANT HAS ONLY EMPLOYED IRONWORKERS ON TWO OTHER OCCASIONS FOR VERY BRIEF PERIODS OF TIME. MORE PARTICULARLY, IN ONE INSTANCE THE COMPLAINANT EMPLOYED ONE IRONWORKER FOR A FEW MONTHS IN 1970 TO APPLY PETROLEUM JELLY ON INTERIOR WINDOW FRAMES INSTALLED AT THE COMMERCE COURT. IN THE OTHER INSTANCE, THE COMPLAINANT, UPON THE REQUEST OF KAWNEER, EMPLOYED A COUPLE OF IRONWORKERS ON A COMPOSITE CREW WITH LABOURERS IN OCTOBER OF 1971 FOR A FEW HOURS TO DO THE WORK OF REMOVING THE FERRAMID FABRIC COATING FROM THE STAINLESS STEEL PANELS AND WINDOW FRAMES WHICH HAD BEEN INSTALLED ON THE COMMERCE COURT AND TO DO THE WORK OF CLEANING THE SAID PANELS AND WINDOWS. THE TESTIMONY OF SZYMCZUK IS THAT, WITH THE ABOVE EXCEPTIONS, THE COMPLAINANT SINCE IT COMMENCED OPERATIONS IN 1955 HAS NEVER EMPLOYED IRONWORKERS IN ANY CAPACITY AND IN PARTICULAR HAS NEVER EMPLOYED THEM TO REMOVE ANY FORM OF PROTECTIVE COATING FROM METAL EXTERIOR PANELS OR WINDOW FRAMES.

5. THERE IS EVIDENCE THAT, AS A GENERAL RULE, THE TRADE THAT APPLIES THE PROTECTIVE COATING ALSO REMOVES IT. DEALING SPECIFICALLY WITH THE PAST PRACTICE IN THE TORONTO AREA, ALTHOUGH THERE ARE SOME CONFLICTS IN THE EVIDENCE, IT APPEARS THAT CONTRACTORS ENGAGED IN THE INSTALLATION OF METAL EXTERIOR PANELS AND WINDOW FRAMES EMPLOY IRONWORKERS TO DO THE INSTALLATION WORK AND THAT WHEN THE SAID PANELS AND WINDOW FRAMES HAVE A PROTECTIVE COATING ON THEM WHICH HAS TO BE PEELED OFF AFTER THEY ARE INSTALLED, THE SAME IRONWORKERS WHO DO THE INSTALLATION WORK ALSO REMOVE THE PROTECTIVE COATING. ON THE OTHER HAND, ACCORDING TO THE EVIDENCE, WHERE THE REMOVAL OF THE PROTECTIVE COATING AND THE CLEANING OF THE METAL PANELS AND WINDOWS, INCLUDING THE GLASS, IS CONTRACTED TO WINDOW CLEANING COMPANIES SUCH AS THE COMPLAINANT, THEN ALL OF THE WORK INVOLVED IN THE CLEANING OF THE PANELS AND WINDOWS, INCLUDING

THE REMOVAL OF ANY PROTECTIVE COATING, IN THE PAST, HAS BEEN PERFORMED BY LABOURERS. THE TESTIMONY OF SZYMCHUK IS THAT THIS HAS ALWAYS BEEN THE PRACTICE OF THE COMPLAINANT.

6. THE REMOVAL OF PROTECTIVE COATINGS, AND IN PARTICULAR THE FERRAMID FABRIC COATING BEING USED ON THE STAINLESS STEEL PANELS AND WINDOW FRAMES INSTALLED ON THE COMMERCE COURT, IS A SIMPLE OPERATION REQUIRING VIRTUALLY NO SKILL OR TRAINING. AGAIN, WITH PARTICULAR REFERENCE TO THE FERRAMID FABRIC COATING, THE ONLY TOOL USUALLY REQUIRED IS A KNIFE TO CUT THE FABRIC ALONG THE EDGE. THE COATING IS THEN READILY PEELED OFF MANUALLY INTO A ROLL. OCCASIONALLY A SCRAPER MAY BE REQUIRED TO REMOVE THE COATING FROM RECESSES. A SCRAPER, HOWEVER, AND SOMETIMES SOLVENTS ARE MORE OFTEN NEEDED TO REMOVE OTHER TYPES OF PEEL COAT SUCH AS ADHESIVE PAPER WHICH HAS BAKED ON TO THE METAL. BECAUSE OF THE NON-ADHESIVE PROPERTIES OF THE FERRAMID FABRIC COATING, BY AND LARGE IT IS NOT NECESSARY TO USE A SCRAPER TO REMOVE THE COATING.

7. THE EVIDENCE OF SZYMCHUK IS THAT THE LABOURERS IN THE EMPLOY OF THE COMPLAINANT HAVE HAD MANY YEARS OF EXPERIENCE IN RIGGING THE TYPE OF SWING STAGES BEING USED IN CONNECTION WITH THE REMOVAL OF THE COATING AND THE CLEANING OF THE EXTERIOR PANELS AND WINDOWS ON THE COMMERCE COURT. MOREOVER, ACCORDING TO SZYMCHUK, THE COMPLAINANT HAS A PERFECT SAFETY RECORD WITH REGARD TO THE USE OF SWING STAGES. THAT IS TO SAY, THE COMPLAINANT HAS HAD NO ACCIDENTS AND NONE OF ITS EMPLOYEES HAVE EVER SUFFERED ANY INJURIES WHILE WORKING ON SWING STAGES RIGGED BY THE COMPLAINANT USING LABOURERS.

8. THE UNDISPUTED TESTIMONY OF SZYMCHUK IS THAT IN THE PERFORMANCE OF THE COMPLAINANT'S CONTRACT, ONLY TEN PER CENT OF THE WORKING TIME IS SPENT DOING THE ACTUAL PEELED OFF OF THE FERRAMID FABRIC COATING. THE OTHER NINETY PER CENT OF THE TIME IS SPENT DOING THE CLEANING WORK. THE EVIDENCE IS THAT IF IRONWORKERS DID THE WORK OF REMOVING THE FERRAMID FABRIC COATING, WHICH IS THE ONLY WORK CLAIMED BY THE IRONWORKERS LOCAL 721, AND THE LABOURERS DID ALL OF THE CLEANING WORK, WHICH IT IS ADMITTED FALLS WITHIN THE JURISDICTION OF THE LABOURERS LOCAL 506, THERE ARE BOUND TO BE SCHEDULING PROBLEMS. MORE SPECIFICALLY, IF A CREW OF LABOURERS AND IRONWORKERS WORKED TOGETHER ON THE SAME SWING STAGES, HAVING REGARD TO THE RATIO OF THE TIME REQUIRED TO PEELED OFF THE PROTECTIVE COATING IN RELATION TO THE TIME REQUIRED TO CLEAN AND WASH THE PANELS AND WINDOWS, INEVITABLY THE IRONWORKERS WOULD BE IDLE FOR SUBSTANTIAL PERIODS OF TIME WAITING FOR THE LABOURERS TO COMPLETE THEIR PORTION OF THE WORK. ON THE OTHER HAND, IF THE IRONWORKERS AND LABOURERS WORKED SEPARATELY ON THE SWING STAGES, OBVIOUSLY THERE WOULD BE A SUBSTANTIAL AMOUNT OF TIME LOST IN RAISING AND LOWERING THE SWING STAGES TO CHANGE CREWS. IN SHORT, FOR THE COMPLAINANT TO EMPLOY IRONWORKERS TO REMOVE THE PROTECTIVE COATING AND LABOURERS TO DO THE CLEANING WOULD RESULT IN THE INEFFICIENT USE OF

MANPOWER AND THE LOSS OF WORKING TIME. ACCORDINGLY, IT CLEARLY WOULD BE MORE ECONOMICAL AND EFFICIENT FOR LABOURERS TO DO BOTH THE WORK INVOLVED IN THE REMOVAL OF THE FERRAMID FABRIC COATING FROM THE STAINLESS STEEL EXTERIOR PANELS AND WINDOW FRAMES AND TO CLEAN THE SAID PANELS AND WINDOWS.

9. ACCORDING TO SZYMCHUK, HE HAS A TRAINED CREW OF LABOURERS IN HIS EMPLOY FULLY CAPABLE OF REMOVING THE FERRAMID FABRIC COATING, WHICH AS ALREADY HAS BEEN STATED REQUIRES NO TRAINING OR SKILL. THESE SAME LABOURERS, HOWEVER, ARE TRAINED AND EXPERIENCED IN DOING ALL ASPECTS OF THE CLEANING WORK. IRONWORKERS, ON THE OTHER HAND, HAVE NO EXPERIENCE OR TRAINING IN DOING THE CLEANING WORK AND INDEED LAY NO CLAIM TO JURISDICTION OVER THIS TYPE OF WORK. HAVING REGARD TO THE TIME INVOLVED IN DOING THE WORK IN DISPUTE IN RELATION TO THE TIME REQUIRED TO DO THE CLEANING WORK AND THE FACT THAT THE LABOURERS IN THE EMPLOY OF THE COMPLAINANT ARE EXPERIENCED IN DOING THE LATTER WORK, IT IS THE PREFERENCE OF THE COMPLAINANT TO EMPLOY LABOURERS TO PERFORM ALL OF THE WORK INVOLVED IN ITS CONTRACT WITH KAWNEER.

10. THE PAST PRACTICE OF THE COMPLAINANT IN PERFORMING CONTRACTS OF THE NATURE WHICH IT HAS WITH KAWNEER, THAT IS, A CONTRACT FOR BOTH THE REMOVAL OF A PROTECTIVE COATING FROM EXTERIOR METAL WALL PANELS AND WINDOWS AND THE CLEANING OF SAME, FAVOURS THE JURISDICTIONAL CLAIM OF THE LABOURERS. FURTHER, THE FACTORS OF ECONOMY AND EFFICIENCY IN THE PRESENT CASE FAVOURS AN ASSIGNMENT OF THE WORK TO LABOURERS. MOREOVER, FOR THE REASONS OUTLINED ABOVE, IT IS THE COMPLAINANT EMPLOYER'S PREFERENCE TO USE LABOURERS TO DO THE WORK IN DISPUTE.

11. HAVING REGARD TO ALL THE FOREGOING CONSIDERATIONS, THE BOARD DEEMS IT ADVISABLE IN ALL THE CIRCUMSTANCES OF THE INSTANT COMPLAINT TO MAKE THE FOLLOWING DIRECTION:

THE COMPLAINANT, LONG BRANCH WINDOW AND METAL CLEANING LIMITED, SHALL ASSIGN ALL OF THE WORK INVOLVED IN THE REMOVAL OF THE FERRAMID FABRIC PROTECTIVE COATING FROM THE STAINLESS STEEL EXTERIOR PANELS AND STAINLESS STEEL WINDOW FRAMES INSTALLED ON THE COMMERCE COURT CONSTRUCTION PROJECT IN THE CITY OF TORONTO TO EMPLOYEES WHO ARE REPRESENTED BY THE LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506.

924-71-M: THEODORE HOGETERP (APPLICANT) v. INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW), LOCAL 222 (RESPONDENT TRADE UNION) v. GENERAL MOTORS OF CANADA LIMITED (RESPONDENT EMPLOYER).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND P. J. O'KEEFFE.

APPEARANCES AT THE HEARING: WILLIAM R. HERRIDGE, Q.C., TED HOGETERP AND GERALD VANDEZANDE FOR THE APPLICANT; T. E. ARMSTRONG, R. WHITE AND W. HARDING FOR THE RESPONDENT TRADE UNION; A. D. G. PURDY FOR THE RESPONDENT EMPLOYER.

DECISION OF J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBER P. J. O'KEEFFE: FEBRUARY 3, 1972.

1. THE NAME "THE INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, U.A.W. LOCAL NO. 222" APPEARING IN THE STYLE OF CAUSE OF THIS APPLICATION AS THE NAME OF THE RESPONDENT TRADE UNION IS AMENDED TO READ: "INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW), LOCAL 222".

2. THE APPLICANT HAS APPLIED FOR EXEMPTION FROM THE UNION SECURITY PROVISIONS IN THE COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT TRADE UNION AND THE RESPONDENT EMPLOYER UNDER THE PROVISIONS OF SECTION 39 OF THE ACT.

3. SECTION 39(1) OF THE ACT READS, IN PART, AS FOLLOWS:

39(1) WHERE THE BOARD IS SATISFIED THAT AN EMPLOYEE BECAUSE OF HIS RELIGIOUS CONVICTION OR BELIEF,

(A) OBJECTS TO JOINING A TRADE UNION; OR

(B) OBJECTS TO THE PAYING OF DUES OR OTHER ASSESSMENTS TO A TRADE UNION,

THE BOARD MAY ORDER THAT THE PROVISIONS OF A COLLECTIVE AGREEMENT OF THE TYPE MENTIONED IN CLAUSE A OF SUBSECTION 1 OF SECTION 38 DO NOT APPLY TO SUCH EMPLOYEE ...

4. THE EVIDENCE ESTABLISHED THAT THE APPLICANT IS A PROFESSING MEMBER OF THE CHRISTIAN REFORM CHURCH. HE IS ALSO A MEMBER AND THE SECRETARY OF A LOCAL OF THE CHRISTIAN LABOUR ASSOCIATION OF CANADA (C.L.A.C.). THIS APPLICATION WAS MADE UNDER THE AUSPICES OF THE COMMITTEE FOR JUSTICE AND LIBERTY WHICH ORGANIZATION APPEARS TO BE SUPPORTED BY C.L.A.C.

5. PRIOR TO BECOMING A MEMBER OF C.L.A.C. THE APPLICANT WAS A

MEMBER OF THE RESPONDENT UNION AND HAD PREVIOUSLY BEEN A MEMBER OF THE STEELWORKERS UNION. HIS MEMBERSHIP IN SUCH "NEUTRAL" OR "SECULAR" UNIONS WAS NOT CONTRARY TO HIS RELIGIOUS CONVICTIONS OR BELIEF AT THAT TIME. INDEED, THE MINISTER OF THE CHURCH ATTENDED BY THE APPLICANT IS NOT OPPOSED TO NEUTRAL UNIONS AND HAS NOT PREACHED AGAINST THEM. HOWEVER, AFTER JOINING C.L.A.C. AND STUDYING LITERATURE PUBLISHED BY THAT ORGANIZATION, THE APPLICANT GRADUALLY BECAME CONVINCED THAT LABOUR RELATIONS MUST BE CARRIED ON SUBJECT TO THE PRINCIPLES AS OUTLINED BY CHRIST IN THE BIBLE AND THEREFORE MUST BE EXPRESSLY COMMITTED TO CHRISTIAN PRINCIPLES.

6. HIS MAIN OBJECTION TO THE U.A.W. IS THAT ITS CONSTITUTION DOES NOT SPECIFICALLY STATE THAT IT IS A CHRISTIAN TRADE UNION WHICH IS GUIDED BY THE CHRISTIAN PRINCIPLES AS SET OUT IN THE BIBLE.

7. THE FIRST PARAGRAPH OF THE PREAMBLE TO THE CONSTITUTION OF THE U.A.W. READS AS FOLLOWS:

WE HOLD THESE TRUTHS TO BE SELF-EVIDENT, EXPRESSIVE OF THE IDEALS AND HOPES OF THE WORKERS WHO COME UNDER THE JURISDICTION OF THIS INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW); THAT ALL MEN ARE CREATED EQUAL, THAT THEY ARE ENDOWED BY THEIR CREATOR WITH CERTAIN INALIENABLE RIGHTS, THAT AMONG THESE ARE LIFE, LIBERTY AND THE PURSUIT OF HAPPINESS. THAT TO SECURE THESE RIGHTS, GOVERNMENTS ARE INSTITUTED AMONG MEN, DERIVING THEIR JUST POWERS FROM THE CONSENT OF THE GOVERNED. WITHIN THE ORDERLY PROCESSES OF SUCH GOVERNMENT LIES THE HOPE OF THE WORKER.

8. THE APPLICANT OBJECTED TO THIS STATEMENT IN THE PREAMBLE ON THE GROUNDS THAT IT WAS AN EXPRESSION OF "HUMANISM". THE APPLICANT BELIEVES THAT ALL TRUTH MUST BE REVEALED TRUTH AS FOUND IN THE BIBLE AND ACCORDINGLY THERE WAS NO SUCH THING AS "SELF-EVIDENT" TRUTH. AGAIN, IT WAS THE APPLICANT'S POSITION THAT GOVERNMENTS DRIVE THEIR POWERS FROM GOD, NOT THE GOVERNED AS STATED IN THE U.A.W. CONSTITUTION.

9. WHEN IT WAS POINTED OUT THAT THE U.A.W. HAD A PRACTICE OF GIVING MEMORIAL BIBLES TO THE FAMILY OF A DECEASED MEMBER OF THE U.A.W., THE APPLICANT AGREED THAT WHILE THIS PRACTICE MAY LEND COMFORT TO THE FAMILY OF A DECEASED MEMBER, SUCH PRACTICE, IN THE EYES OF THE APPLICANT, DID NOT ESTABLISH THAT THE U.A.W. WAS A CHRISTIAN TRADE UNION. SIMILARLY, THE FACT THAT THE U.A.W. WAS AFFILIATED WITH AND GAVE FINANCIAL SUPPORT TO THE RELIGION LABOUR COUNCIL DID NOT MAKE THE U.A.W. A CHRISTIAN TRADE UNION.

10. THE UNION CALLED HENRY SEMPLONIUS AS A WITNESS. MR. SEMPLONIUS WAS A DISTRICT COMMITTEE MAN FOR THE UNION AND THE APPLICANT CAME UNDER HIS JURISDICTION AT THE RESPONDENT COMPANY'S PLANT. MR. SEMPLONIUS TESTIFIED THAT HE TOO WAS A MEMBER OF THE CHRISTIAN REFORM CHURCH. PRIOR TO ACCEPTING OFFICE WITH THE UNION, MR. SEMPLONIUS CONSULTED THE MINISTER OF HIS CHURCH FOR GUIDANCE. HIS MINISTER ADVISED HIM THAT AS A MEMBER OF THE U.A.W. IT WAS HIS CHRISTIAN DUTY TO WORK FOR THE UNION IN ITS EFFORTS TO PROPERLY REPRESENT THE EMPLOYEES. WHILE IT IS NOT OUR FUNCTION NOR IS IT OUR INTENTION TO ATTEMPT TO ASSESS THE RELATIVE STRENGTH OF THE FAITH OF THE APPLICANT AS COMPARED TO MR. SEMPLONIUS, WE ARE SATISFIED THAT, ALTHOUGH THE RELIGIOUS CONVICTIONS OF MR. SEMPLONIUS AS THEY PERTAIN TO NEUTRAL TRADE UNION DIFFER FROM THE CONVICTIONS OF THE APPLICANT, MR. SEMPLONIUS IS AS DEDICATED TO HIS CHURCH AS IS THE APPLICANT AND INDEED, IF FINANCIAL CONTRIBUTIONS ARE A PROPER MEASURE OF ONE'S COMMITMENT TO HIS BELIEFS, MR. SEMPLONIUS' COMMITMENT APPEARS TO BE ABOUT TWICE AS STRONG AS THAT OF THE APPLICANT. ACCORDINGLY, MR. SEMPLONIUS' TESTIMONY CONCERNING THE SPIRITUAL REQUIREMENTS OF A PROFESSING MEMBER OF THE CHRISTIAN REFORM CHURCH MUST BE GIVEN GREAT WEIGHT. MR. SEMPLONIUS STATED THAT ALTHOUGH TWENTY PER CENT TO THIRTY PER CENT OF THE MEMBERS OF HIS CONGREGATION ARE MEMBERS OF THE U.A.W., NO MEMBER OF HIS CONGREGATION HAS EXPRESSED ANY OBJECTION TO MEMBERSHIP IN THE U.A.W. BECAUSE OF RELIGIOUS CONVICTIONS OR BELIEF. HIS VIEWS OF MEMBERSHIP IN THE U.A.W. APPEAR TO BE SHARED BY THE VAST MAJORITY OF THE PROFESSING MEMBERS OF HIS CHURCH AND INDEED BOTH THE APPLICANT'S MINISTER AND MR. SEMPLONIUS' MINISTER HOLD THE VIEWS OF MR. SEMPLONIUS IN THIS REGARD RATHER THAN THOSE OF THE APPLICANT.

11. HOWEVER THAT MAY BE, IT IS NOT THE RELIGIOUS CONVICTIONS OR BELIEFS OF A CERTAIN RELIGIOUS SECT THAT MUST BE DETERMINED UNDER SECTION 39 OF THE ACT. THE RELIGIOUS CONVICTION OR BELIEF ON WHICH THE OBJECTION MUST BE BASED IS THE PERSONAL CONVICTION OR BELIEF OF THE APPLICANT AND ACCORDINGLY IS A SUBJECTIVE MATTER. WE ARE SATISFIED THAT THE APPLICANT OBJECTS TO JOINING AND SUPPORTING THE RESPONDENT UNION BECAUSE OF HIS RELIGIOUS CONVICTION OR BELIEF. THE FACT THAT THIS CONVICTION OR BELIEF GREW OUT OF HIS RELATIONSHIP WITH C.L.A.C. RATHER THAN THE CHURCH OF WHICH HE IS A MEMBER IN NO WAY DETRACTS FROM THE NATURE OF HIS RELIGIOUS OBJECTION. AGAIN, ALTHOUGH WE ACCEPT THE VIEW THAT HIS MOTIVATION IN MAKING HIS APPLICATION IS BASED, AT LEAST IN PART, ON HIS DESIRE TO HAVE MINORITY REPRESENTATION BY C.L.A.C. BY THOSE WHO SHARE HIS OBJECTIONS, HIS PREFERENCE FOR C.L.A.C. IS BASED ON RELIGIOUS GROUNDS. HIS SUPPORT OF C.L.A.C. AND HIS RELIGIOUS CONVICTIONS OR BELIEFS ARE INTERTWINED AND INDEED ARE INSEPARATE. THIS DUAL MOTIVATION, BECAUSE OF ITS RELIGIOUS CONNOTATION, DOES NOT DEPRIVE THE APPLICANT OF THE RELIEF AFFORDED BY SECTION 39 OF THE ACT. THE "OBJECTION" REFERRED TO IN SECTION 39 OF THE ACT NEED NOT THE SOLE OBJECTION

OR EVEN THE PRIMARY OBJECTION TO MEMBERSHIP IN OR SUPPORT OF A TRADE UNION. AS LONG AS AN APPLICANT HAS A BONA FIDE OBJECTION BECAUSE OF HIS RELIGIOUS CONVICTION OR BELIEF, HE IS ENTITLED TO THE RELIEF AFFORDED BY SECTION 39 EVEN IF HE HOLDS AN OBJECTION TO MEMBERSHIP IN AND SUPPORT OF A TRADE UNION BECAUSE OF SOME OTHER GROUND.

12. HOWEVER THAT MAY BE, WHAT GIVES US SERIOUS CONCERN AS A RESULT OF THE EVIDENCE IN THIS CASE IS THE FACT THAT C.L.A.C. APPEARS TO BE STRESSING ITS VIEWS OF "CHRISTIANITY" TO SUCH A DEGREE THAT IT CAUSES ITS MEMBERS TO TAKE POSITIONS ON RELIGIOUS MATTERS WHICH ARE NOT HELD BY MANY OF THE MEMBERS AND MINISTERS OF THE CHURCH OUT OF WHICH C.L.A.C. EMANATED. TO THIS EXTENT AND IN THIS AREA, C.L.A.C. IS EXERCISING MORE RELIGIOUS INFLUENCE THAN THE CHRISTIAN REFORM CHURCH ITSELF. THESE ACTS OF RELIGIOUS PERSUASION ENGAGED IN BY C.L.A.C. FAR EXCEED ITS CONSTITUTIONAL COMMITMENT TO ADHERE TO CHRISTIAN PRINCIPLES. C.L.A.C. APPEARS TO BE PROSELYTISING A VERSION OF "CHRISTIANITY" NOT SHARED BY NON-CHRISTIANS OR EVEN THE MAJORITY OF CHRISTIANS AND INDEED NOT SHARED BY MANY OF THE MEMBERS OF THE CHRISTIAN REFORM CHURCH. SUCH PRACTICE MAY LEAD TO THE CONCLUSION THAT BECAUSE C.L.A.C. ACTIVELY PROMOTES A CERTAIN VERSION OF "CHRISTIANITY" IT HAS BECOME A RELIGIOUS ORGANIZATION WHICH DISCRIMINATES BECAUSE OF CREED CONTRARY TO SECTION 12 OF THE ACT AND THEREFORE SHOULD NOT BE CERTIFIED BY THE BOARD.

13. HAVING REGARD TO ALL THE EVIDENCE AND THE REPRESENTATIONS OF THE PARTIES, THE BOARD IS SATISFIED THAT THE APPLICANT IS AN EMPLOYEE OF THE RESPONDENT EMPLOYER WHO, BECAUSE OF HIS RELIGIOUS CONVICTION OR BELIEF, OBJECTS TO JOINING THE RESPONDENT TRADE UNION AND OBJECTS TO THE PAYING OF DUES OR OTHER ASSESSMENTS TO THE RESPONDENT TRADE UNION.

14. THE BOARD THEREFORE ORDERS AND DIRECTS THAT THE PROVISIONS OF THE COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT EMPLOYER AND THE RESPONDENT UNION WHICH ARE OF THE TYPE MENTIONED IN SECTION 38(1)(A) OF THE ACT DO NOT APPLY TO THE APPLICANT AND ACCORDINGLY THE APPLICANT IS NOT REQUIRED TO JOIN THE RESPONDENT UNION, TO BE OR CONTINUE TO BE A MEMBER OF THE RESPONDENT UNION OR TO PAY ANY DUES, FEES OR OTHER ASSESSMENTS TO THE RESPONDENT UNION PROVIDED THAT AMOUNTS EQUAL TO ANY INITIATION FEES, DUES OR OTHER ASSESSMENTS ARE PAID BY THE APPLICANT TO OR ARE REMITTED BY THE RESPONDENT EMPLOYER TO A CHARITABLE ORGANIZATION MUTUALLY AGREED UPON BY THE APPLICANT AND THE RESPONDENT TRADE UNION.

15. HOWEVER, IF THE APPLICANT AND THE RESPONDENT TRADE UNION FAIL TO AGREE ON SUCH CHARITABLE ORGANIZATION, THE BOARD, UPON THE REQUEST OF EITHER THE APPLICANT OR THE RESPONDENT UNION, WILL DESIGNATE, PURSUANT TO THE PROVISIONS OF SECTION 39(1) OF THE ACT, A

CHARITABLE ORGANIZATION REGISTERED AS SUCH IN CANADA UNDER PART I OF THE INCOME TAX ACT (CANADA).

DECISION OF BOARD MEMBER J. D. BELL: FEBRUARY 3, 1972.

I AGREE WITH THE FINDINGS OF THE MAJORITY OF THE BOARD AS EXPRESSED IN PARAGRAPH 13 OF THE DECISION.

I ALSO CONCUR WITH THE ORDER AND DIRECTION GIVEN IN PARAGRAPH 14.

I DISASSOCIATE MYSELF FROM THE VIEW AND OPINION EXPRESSED BY THE MAJORITY IN PARAGRAPH 12 OF THE DECISION.

779-71-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) v. FOUNDATION-JANIN (A JOINT VENTURE) (RESPONDENT).

BEFORE: R.A. FURNESS, VICE CHAIRMAN AND BOARD MEMBERS E. BOYER AND F.W. MURRAY.

DECISION OF THE BOARD: FEBRUARY 3, 1972.

1. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(N) OF THE LABOUR RELATIONS ACT.
2. THE BOARD FURTHER FINDS THAT THIS IS AN APPLICATION FOR CERTIFICATION WITHIN THE MEANING OF SECTION 108 OF THE LABOUR RELATIONS ACT.
3. THE APPLICANT IS SEEKING CERTIFICATION WITH RESPECT TO A UNIT OF EMPLOYEES DESCRIBED AS:

"ALL EMPLOYEES OF FOUNDATION-JANIN (A JOINT VENTURE) WORKING IN THE REGIONAL MUNICIPALITY OF OTTAWA - CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS, AND SIMILAR EQUIPMENT AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND THOSE ABOVE THE RANK OF NON-WORKING FOREMAN."

4. THE APPLICANT IN ITS FORM 49, APPLICATION FOR CERTIFICATION,

CONSTRUCTION INDUSTRY, NAMED "FOUNDATION-JANIN (A JOINT VENTURE)" AS THE RESPONDENT AND IN PARAGRAPH 10 THEREIN THE APPLICANT STATED:

A PAY STUB INDICATING PAYING COMPANY IS ENCLOSED. WE BELIEVE SECTION 1.4 (SIC) OF THE LABOUR RELATIONS ACT APPLIES.

5. A FORM 55, REPLY TO APPLICATION FOR CERTIFICATION, CONSTRUCTION INDUSTRY, WAS FILED BY THE FOUNDATION COMPANY OF CANADA LIMITED (HEREINAFTER REFERRED TO AS "FOUNDATION"). IN THIS REPLY FOUNDATION STATED THAT THE EMPLOYEES AFFECTED BY THIS APPLICATION WERE EMPLOYEES OF FOUNDATION AND ALLEGED THAT THESE EMPLOYEES WERE ALREADY REPRESENTED BY THE APPLICANT PURSUANT TO A COLLECTIVE AGREEMENT BETWEEN FOUNDATION AND THE APPLICANT IN EFFECT FROM SEPTEMBER 11, 1969 UNTIL APRIL 30, 1971 AND THEREAFTER FROM YEAR TO YEAR SUBJECT TO NOTICE.

6. AT THE HEARING IN THIS MATTER, THE APPLICANT AGREED WITH FOUNDATION THAT THE COLLECTIVE AGREEMENT REFERRED TO IN PARAGRAPH FIVE HEREIN COVERED THE EMPLOYEES AFFECTED BY THIS APPLICATION IN THE EVENT THAT THEY WERE EMPLOYEES OF FOUNDATION. A REPRESENTATIVE OF FOUNDATION STATED THAT BOTH FOUNDATION AND JANIN BUILDING & CIVIL WORKS LIMITED (HEREINAFTER REFERRED TO AS "JANIN") WERE AS A MATTER OF CONVENIENCE OPERATING UNDER A JOINT VENTURE. THIS REPRESENTATION ALSO INFORMED THE BOARD THAT FOUNDATION IS THE SPONSOR OF THE PROJECT AFFECTED BY THIS APPLICATION, SUPERVISES THE WORK, HAS RETAINED ITS OWN EMPLOYEES TO PERFORM THE WORK ON THE PROJECT IN QUESTION, AND, WITH JANIN, HAS JOINTLY ENTERED INTO A CONTRACT TO CARRY OUT THE PROJECT. ACCORDING TO THIS REPRESENTATIVE, JANIN'S PARTICIPATION IN THIS VENTURE IS LIMITED TO SUPPLYING SOME OF THE FUNDS REQUIRED TO CARRY OUT THE PROJECT.

7. THE APPLICANT ON THE OTHER HAND MAINTAINED THAT THE RESPONDENT, FOUNDATION-JANIN (A JOINT VENTURE), WAS THE EMPLOYER OF THE EMPLOYEES AFFECTED BY THIS APPLICATION AND REQUESTED THAT IT BE GRANTED CERTIFICATION ON BEHALF OF THE EMPLOYEES OF FOUNDATION-JANIN (A JOINT VENTURE) REFERRED TO IN PARAGRAPH THREE HEREIN, OR, ALTERNATIVELY, THAT THE BOARD APPLY THE PROVISIONS OF SECTION 1(4) OF THE LABOUR RELATIONS ACT, GRANT CERTIFICATION TO THE APPLICANT ON BEHALF OF THE EMPLOYEES REFERRED TO IN PARAGRAPH THREE HEREIN AND TREAT FOUNDATION AND JANIN AS ONE EMPLOYER FOR THE PURPOSES OF THE LABOUR RELATIONS ACT.

8. THE BOARD HAS CONSIDERED THE REPRESENTATIONS ADDRESSED TO IT IN CONNECTION WITH THE REPORT OF THE EXAMINER DATED NOVEMBER 29, 1971.

9. THE EVIDENCE OF BEVIS R. ELLIOTT REVEALS THAT HE WAS EMPLOYED

ON JULY 22, 1971, THE DATE OF THE MAKING OF THIS APPLICATION, AS A DISTRICT MANAGER OF FOUNDATION AND THAT THE TWO EMPLOYEES AFFECTED BY THIS APPLICATION WERE EMPLOYED FOR THE PROJECT KNOWN AS FOUNDATION-JANIN (A JOINT VENTURE) BY FOUNDATION. ELLIOTT IDENTIFIED SEVERAL EXHIBITS FILED WITH THE BOARD AND IT IS QUITE CLEAR THAT THE DAY TO DAY RECORDS OF EMPLOYEES' ACTIVITIES WERE MAINTAINED ON FOUNDATION'S RECORDS. SIMILARLY, PHOTOSTAT COPIES OF CHEQUES FILED WITH THE BOARD WERE PREPARED BY FOUNDATION FOR THIS PARTICULAR PROJECT AND THE SIGNING OFFICERS THEREON, NAMELY, P. MONTREUIL AND J. MONTFORD, WERE EMPLOYEES OF FOUNDATION. ELLIOTT ALSO IDENTIFIED AN EMPLOYER'S STATEMENT WITH RESPECT TO WAGES. THIS STATEMENT WHICH WAS APPARENTLY COMPLETED PURSUANT TO THE WORKMEN'S COMPENSATION ACT INDICATES FOUNDATION JANIN (A JOINT VENTURE) AS AN EMPLOYER. HOWEVER, THE STATEMENT WAS COMPLETED AND DATED SOME SIX MONTHS PRIOR TO THE DATE OF THE MAKING OF THIS APPLICATION.

10. THE EVIDENCE OF GORDON C. BRADSHAW ESTABLISHED THAT ON THE DATE OF THE MAKING OF THIS APPLICATION HE WAS EMPLOYED BY FOUNDATION AS A SUPERINTENDENT. THE EVIDENCE OF PETER THOMPSON INDICATES THAT HE WAS EMPLOYED AS A FOREMAN BY FOUNDATION FOR A JOINT VENTURE WITH JANIN.

11. THE TESTIMONY OF THE TWO MEN AFFECTED BY THIS APPLICATION, NAMELY, ROLLAND CHARBONNEAU AND VIANNY LALONDE INDICATES THAT THEY BELIEVED THEY WERE WORKING FOR FOUNDATION. WHILE CHEQUES WERE ISSUED ON JULY 24, 1971 TO CHARBONNEAU AND LALONDE IN THE NAME OF FOUNDATION JANIN, A JOINT VENTURE, THEY COULD NOT POSITIVELY IDENTIFY TO WHICH PERIOD SUCH CHEQUES RELATED. SIMILARLY THEY CLEARLY REGARDED THEIR SUPERVISORS ON THE JOB SITE TO BE EMPLOYEES OF FOUNDATION AND NOT OF THE JOINT VENTURE.

12. PAUL MONTREUIL ALSO GAVE EVIDENCE BEFORE THE EXAMINER. HIS EVIDENCE SHOWS THAT HE HAS BEEN EMPLOYED BY FOUNDATION AND ITS GROUP OF COMPANIES FOR MANY YEARS AS AN OFFICE MANAGER. WHILE ONE OF HIS STAFF APPEARS TO HAVE BEEN EMPLOYED BY FOUNDATION-JANIN, IT IS QUITE CLEAR THAT MONTREUIL WAS EMPLOYED BY FOUNDATION WITH RESPECT TO THE PROJECT AFFECTED BY THIS APPLICATION. MONTREUIL GAVE EVIDENCE THAT UNEMPLOYMENT INSURANCE IS PAID BY FOUNDATION, THAT FEDERAL TAX AND GOVERNMENT PENSION PAYMENTS ARE PAID ON CHEQUES IN THE NAME OF THE JOINT VENTURE AND THAT THE COMPANY PENSION, GROUP INSURANCE AND SALARY CONTINUANCE INSURANCE ARE PAID BY FOUNDATION IN TORONTO ON FOUNDATION-JANIN CHEQUES. THE MEDICAL AND HOSPITAL PAYMENTS ARE PAID IN THE NAME OF FOUNDATION-JANIN, A JOINT VENTURE. WORKMEN'S COMPENSATION IS PAID IN THE NAME OF THE JOINT VENTURE AND UNEMPLOYMENT INSURANCE IS PAID BY CHEQUE FROM THE JOINT VENTURE AND IS CLEARED THROUGH FOUNDATION'S OFFICE IN TORONTO.

13. THE APPLICANT HAS MADE REPRESENTATIONS TO THE BOARD WITH RESPECT TO THE REPORT OF THE EXAMINER. AS NOTED EARLIER, THE BOARD HAS CONSIDERED THESE REPRESENTATIONS. HOWEVER, IN ITS LETTER TO THE BOARD, THE APPLICANT HAS SOUGHT TO INTRODUCE ADDITIONAL EVIDENCE REGARDING THE FILING OF CORPORATE RETURNS AND CERTAIN INFORMATION ABOUT THE DIRECTORS OF FOUNDATION AND JANIN. THE BOARD HAS NOT TAKEN THESE ADDITIONAL ALLEGED FACTS INTO CONSIDERATION. THE BOARD NOTES THAT IN PARAGRAPH 54 OF THE REPORT OF THE EXAMINER IN THIS MATTER, THE EXAMINER HAS STATED THAT FULL OPPORTUNITY TO BE HEARD, TO EXAMINE AND CROSS-EXAMINE WITNESSES AND TO INTRODUCE EVIDENCE ON THE ISSUES BEFORE HIM WAS AFFORDED TO EACH PARTY. THE PROPER TIME FOR THE APPLICANT TO INTRODUCE ITS EVIDENCE BEFORE THE BOARD WAS DURING THE EXAMINATION CONDUCTED BY THE EXAMINER. IN ADDITION, THE BOARD NOTES THAT THE APPLICANT HAS NOT ALLEGED THAT IT WAS DENIED THE OPPORTUNITY REFERRED TO IN PARAGRAPH 54 OF THE REPORT OF THE EXAMINER.

14. ON CONSIDERING ALL OF THE EVIDENCE BEFORE IT, THE BOARD FINDS THAT THE EMPLOYEES AFFECTED BY THIS APPLICATION WERE EMPLOYEES OF FOUNDATION. WE NOW COME TO THE QUESTION OF WHETHER THE EMPLOYEES AFFECTED BY THIS APPLICATION WERE, ON THE DATE OF THE MAKING OF THIS APPLICATION, EMPLOYED BY FOUNDATION-JANIN (A JOINT VENTURE). IT APPEARS TO THE BOARD THAT THE EMPLOYEES AFFECTED BY THIS APPLICATION WERE DIRECTED IN ALL PHASES OF THEIR WORK BY EMPLOYEES OF FOUNDATION AND THAT WHILE CERTAIN PAYMENTS PERTINENT TO THEIR EMPLOYMENT IN ONTARIO WERE MADE BY FOUNDATION-JANIN, A JOINT VENTURE, THEY WERE ON THE DATE OF THE MAKING OF THIS APPLICATION EMPLOYEES OF FOUNDATION. THIS APPEARS TO THE BOARD TO BE CONSISTENT WITH THE ASSERTION OF FOUNDATION AT THE HEARING BEFORE THE BOARD THAT THE SETTING UP OF A JOINT VENTURE TO COMPLETE THE PROJECT AFFECTED BY THIS APPLICATION WAS DONE AS A MATTER OF CONVENIENCE AND THAT JANIN'S PARTICIPATION IN AND CONTRIBUTION TO THE JOINT PROJECT WAS LIMITED TO A FINANCIAL ARRANGEMENT.

15. WITH RESPECT TO THE REQUEST BY THE APPLICANT TO APPLY PROVISIONS OF SECTION 1(4) OF THE LABOUR RELATIONS ACT, THE BOARD NOTES THAT THE CRITERIA WHICH THE BOARD LAID DOWN IN THE WALTERS LITHOGRAPHING LIMITED CASE, OLRB. M.R. JULY 1971, P.406, NAMELY,

- (1) COMMON OWNERSHIP OR FINANCIAL CONTROL,
- (2) COMMON MANAGEMENT,
- (3) INTERRELATIONSHIP OF OPERATIONS,
- (4) REPRESENTATION TO THE PUBLIC AS A SINGLE INTEGRATED ENTERPRISE, AND

(5) CENTRALIZED CONTROL OF LABOUR
RELATIONS

HAVE NOT BEEN SATISFIED. ON THE CONTRARY, THERE IS A COMPLETE LACK ON EVIDENCE ON THESE VARIOUS CRITERIA.

16. HAVING REGARD TO THE FOREGOING, THE BOARD FINDS THAT THE EMPLOYEES AFFECTED BY THIS APPLICATION WERE EMPLOYEES OF FOUNDATION AND ARE ACCORDINGLY COVERED BY THE COLLECTIVE AGREEMENT REFERRED TO IN PARAGRAPH FIVE HEREIN.

17. IN THE RESULT THEREFORE, SINCE THE APPLICANT ALREADY HAS BARGAINING RIGHTS FOR THE EMPLOYEES AFFECTED BY THIS APPLICATION, THIS PROCEEDING IS TERMINATED.

1296-71-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL 786 (APPLICANT) v. SENTINEL RELIANCE PRODUCTS LIMITED (RESPONDENT) v. ONTARIO ERECTORS ASSOCIATION (PARTY ADDED BY THE BOARD) v. INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS (PARTY ADDED BY THE BOARD).

BEFORE: R.A. FURNESS, VICE CHAIRMAN AND BOARD MEMBERS E. BOYER AND F.W. MURRAY.

APPEARANCES AT THE HEARING: JAMES TYE AND AUBREY GOLDEN FOR THE APPLICANT; R.A. FARRANT FOR THE RESPONDENT; ROBIN B. CUMINE AND S.C. ECCLES FOR THE ONTARIO ERECTORS ASSOCIATION; JEFFREY SACK AND NORM WILSON FOR THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS.

DECISION OF THE BOARD: FEBRUARY 4, 1972.

1. THE BOARD NOTES THE AGREEMENT OF THE PARTIES TO THE SUBSTITUTION OF MR. E. BOYER IN THE PLACE AND STEAD OF MR. A. MAIN.

2. THE BOARD HAS CAREFULLY CONSIDERED THE REPRESENTATION OF THE APPLICANT, THE RESPONDENT, THE ONTARIO ERECTORS ASSOCIATION AND THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS REGARDING THE CLAIM OF THE LATTER TWO ENTITIES TO BE MADE A PARTY TO THIS PROCEEDING. CONSIDERING, FIRSTLY, THE POSITION OF THE ONTARIO ERECTORS ASSOCIATION. IT IS A SIGNATORY TO THE ALLEGED COLLECTIVE AGREEMENT BEFORE THE BOARD AND CLAIMS TO HAVE THE AUTHORITY TO BARGAIN ON BEHALF OF ITS MEMBERS. CONSIDERING, SECONDLY, THE POSITION OF THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS. IT TAKES THE POSITION THAT ONE OF ITS OFFICERS, PURSUANT TO AUTHORITY UNDER ITS CONSTITUTION, HAS DULY EXECUTED THE ALLEGED COL-

LECTIVE AGREEMENT ON BEHALF OF THE APPLICANT. THESE FACTS HAVE NOT BEEN DISPUTED.

3. HAVING REGARD TO THE FOREGOING, THE BOARD DIRECTS THAT THE ONTARIO ERECTORS ASSOCIATION AND THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS BE ADDED AND THEY ARE HEREBY ADDED AS PARTIES TO THIS PROCEEDING PURSUANT TO SECTION 54 OF THE BOARD'S RULES OF PROCEDURE.

4. THE REGISTRAR IS DIRECTED TO LIST THIS MATTER FOR CONTINUATION OF HEARING.

5. THE MATTER IS REFERRED TO THE REGISTRAR.

1432-71-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 93 (APPLICANT) v. URBANDALE REALTY CORPORATION LIMITED (RESPONDENT).

BEFORE: R.A. FURNESS, VICE CHAIRMAN AND BOARD MEMBERS E. BOYER AND F.W. MURRAY.

DECISION OF THE BOARD: FEBRUARY 10, 1972.

1. IN A TELEGRAM RECEIVED BY THE BOARD ON FEBRUARY 7, 1972, THE APPLICANT REQUESTED A FURTHER MEETING WITH THE EXAMINER TO INQUIRE INTO THE DUTIES OF ROGER ST. DENIS. THIS REQUEST WAS RECEIVED AFTER THE EXAMINER HAD CONCLUDED HIS EXAMINATION IN THIS MATTER.

2. THE APPLICANT HAS NOT ALLEGED THAT IT WAS DENIED FULL OPPORTUNITY TO BE HEARD, TO EXAMINE AND CROSS-EXAMINE WITNESSES AND TO INTRODUCE EVIDENCE BEARING ON THE ISSUES BEFORE THE EXAMINER.

3. HAVING REGARD TO THE FOREGOING THE REQUEST OF THE APPLICANT IS DENIED. IT APPEARS FROM THE CONTENTS OF THE ABOVE NOTED TELEGRAM THAT THE APPLICANT WISHES TO DRAW THE BOARD'S ATTENTION WITH RESPECT TO ALLEGED CONFLICTING STATEMENTS IN THE EVIDENCE GIVEN BEFORE THE EXAMINER. IT IS, OF COURSE, OPEN TO THE APPLICANT TO MAKE ITS REPRESENTATIONS TO THE BOARD ON THE REPORT OF THE EXAMINER.

1384-71-U: CANADIAN UNION OF PUBLIC EMPLOYEES (COMPLAINANT) v. WOMEN'S COLLEGE HOSPITAL (RESPONDENT).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND A. MAIN.

APPEARANCES AT THE HEARING: S. T. GOUDGE, C. G. PALIARE AND W. A. ACTON FOR THE COMPLAINANT; H. A. BERESFORD, MISS J. YOUNG, MISS T. MAY AND MISS M. INGLIS FOR THE RESPONDENT.

DECISION OF THE BOARD: FEBRUARY 8, 1972.

1. THIS IS A COMPLAINT MADE PURSUANT TO THE PROVISIONS OF THE LABOUR RELATIONS ACT WITH RESPECT TO KENRICK BARRON WHO WAS DISCHARGED BY THE RESPONDENT ON FRIDAY, DECEMBER 10, 1971.

2. MR. BARRON HAD BEEN EMPLOYED BY THE RESPONDENT AS AN ORDERLY. HIS DUTIES REQUIRED HIM TO LOOK AFTER THE NEEDS OF THE MALE PATIENTS IN THE RESPONDENT'S HOSPITAL. ALTHOUGH THE NUMBER OF MALE PATIENTS ON ANY ONE DAY VARIED BETWEEN TEN TO TWENTY-SIX, THEY COULD BE FOUND IN AS MANY AS NINE PLACES IN THE HOSPITAL. AS A RESULT, MR. BARRON WAS NOT STATIONED IN ANY ONE AREA BUT WAS REQUIRED TO "FLOAT" TO ALL PARTS OF THE HOSPITAL AS NEEDED. MR. BARRON HAD BEEN THE FIRST MALE ORDERLY HIRED BY THE HOSPITAL. HE WAS EMPLOYED BECAUSE THE RESPONDENT HOPED THAT THE RATIO OF MALE PATIENTS IN THE HOSPITAL WOULD INCREASE.

3. MR. BARRON BEGAN ACTIVELY ORGANIZING THE RESPONDENT'S EMPLOYEES ON BEHALF OF THE COMPLAINANT ON OCTOBER 22, 1971. HE HANDED OUT MEMBERSHIP CARDS, LEAFLETS AND BOOKLETS ON THE RESPONDENT'S PREMISES AND TOOK NO STEPS TO KEEP HIS EFFORTS SECRET. NO MANAGEMENT PERSON SPOKE TO MR. BARRON ABOUT THE UNION OR HIS ORGANIZING ACTIVITIES. ON DECEMBER 10, 1971 MR. BARRON WAS CALLED TO THE OFFICE OF MISS MAY, THE ASSISTANT NURSING DIRECTOR, AND WAS ADVISED THAT HIS SERVICES WERE TERMINATED. HIS TERMINATION NOTICE READS AS FOLLOWS:

THIS WILL CONFIRM THAT YOUR EMPLOYMENT AS AN ORDERLY AT WOMEN'S COLLEGE HOSPITAL IS TERMINATED AS OF 4 P.M. TO-DAY DECEMBER 10TH 1971.

WE HAVE DECIDED TO PHASE OUT THE ORDERLY POSITION ON THE WARDS EXCEPT FOR 9 EAST, AND WILL THEREFORE NO LONGER HAVE WORK FOR YOU AND ARE PAYING YOU TWO FULL WEEKS SALARY IN LIEU OF NOTICE.

WE REALIZE THAT YOU HOPE TO PURSUE A CAREER APART FROM ORDERLY WORK AND WISH YOU EVERY SUCCESS WITH FINDING WORK IN THE AREA OF YOUR SPECIAL INTEREST.

4. NO MENTION WAS MADE OF THE UNION OR MR. BARRON'S ACTIVITIES ON ITS BEHALF AT THE TIME OF HIS DISCHARGE. THERE WAS SOME DISCUSSION

CONCERNING WHAT MR. BARRON INTENDED TO DO FOLLOWING HIS DISMISSAL AND MISS MAY SUGGESTED THAT IT WOULD BE HELPFUL IF HE TOOK A COURSE FOR ORDERLIES WHICH WAS GIVEN AT GEORGE BROWN COMMUNITY COLLEGE AND SHE GAVE HIM A PAMPHLET WHICH DESCRIBED THE COURSE.

5. DURING AN EVALUATION INTERVIEW IN OCTOBER, MR. BARRON HAD INDICATED THAT HE WAS TAKING A COURSE IN ELECTRONICS WITH THE HOPE OF OBTAINING EMPLOYMENT IN THAT FIELD. HIS EVALUATION RECORD INDICATES THAT HE WAS BELOW AVERAGE IN "KNOWLEDGE AND SKILL IN BEDSIDE NURSING" AND IN "CAPACITY FOR JUDGMENT".

6. ALTHOUGH MR. BARRON HAD TOLD THE RESPONDENT AT THE TIME HE WAS HIRED THAT HE HAD GAINED EXPERIENCE AS AN ORDERLY IN TRINIDAD AND GAVE THE RESPONDENT REFERENCES, HE ACKNOWLEDGED AT THE HEARING THAT THIS INFORMATION HAD BEEN FALSE AND THAT HE HAD NO PRIOR EXPERIENCE AS AN ORDERLY.

7. THE COMPLAINANT CALLED AS A WITNESS MISS CZERNY WHO WAS AN AREA SUPERVISOR FOR THE RESPONDENT. MISS CZERNY TESTIFIED THAT ON OR ABOUT DECEMBER 6TH SHE HAD INFORMED MISS MAY AND MISS YOUNG, THE DIRECTOR OF NURSING SERVICE, THAT SHE HAD BEEN ADVISED THAT "KEN" OR "KENT" AND A FORMER EMPLOYEE HAD PASSED OUT PAPERS WHICH THEY ASSUMED WERE UNION PAMPHLETS. MISS CZERNY FURTHER TESTIFIED THAT NEITHER MISS YOUNG NOR MISS MAY MADE ANY FURTHER INQUIRIES CONCERNING THE MATTER BUT HAD INSTRUCTED HER NOT TO INTERFERE OR TO OFFER ANY OPINIONS TO THE EMPLOYEES EITHER FOR OR AGAINST THE UNION, SINCE IT WAS A MATTER WHICH THE EMPLOYEES MUST DECIDE ON THEIR OWN.

8. THERE WAS NO EVIDENCE THAT ANY OFFICIAL OF THE RESPONDENT HAD MADE ANY INQUIRIES OF EMPLOYEES CONCERNING THE UNION OR HAD SAID ANYTHING TO ANY EMPLOYEE ABOUT THE MATTER.

9. BOTH MISS YOUNG AND MISS MAY TESTIFIED THAT WHEN MR. BARRON WAS HIRED IT WAS HOPED THAT THE MALE POPULATION IN THE HOSPITAL WOULD INCREASE AND THAT ALL MALE PATIENTS COULD BE PLACED ON ONE FLOOR. BECAUSE OF OBJECTIONS FROM THE MEDICAL STAFF OF THE HOSPITAL, THE PLANS TO BRING THE MALE PATIENTS TOGETHER NEVER MATERIALIZED AND THE RATIO OF MALE AND FEMALE PATIENTS REMAINED UNCHANGED. MR. BARRON WAS REQUIRED TO FLOAT FROM ONE AREA OF THE HOSPITAL TO ANOTHER IN ORDER TO SERVICE THE NEEDS OF THE MALE PATIENTS. APART FROM THE ORDERLIES WHO WORKED WITH THE MENTALLY DISTURBED PATIENTS IN THE PSYCHIATRIC WARD ON "9 EAST" MR. BARRON WAS THE ONLY OTHER MALE ORDERLY IN THE HOSPITAL.

10. MISS MAY AND MISS YOUNG ALSO TESTIFIED THAT WHEN THEIR PLANS TO BRING THE MALE PATIENTS TOGETHER ON ONE FLOOR FELL THROUGH THEY DECIDED THAT BECAUSE OF DIFFICULTIES EXPERIENCED IN SUPERVISING AND TRAINING AN ORDERLY WHO WAS WORKING IN SO MANY AREAS OF THE HOSPITAL

IT WOULD BE EXPEDIENT TO REVERT TO THEIR FORMER PRACTICE OF HAVING NURSES LOOK AFTER THE NEEDS OF THE MALE PATIENTS. THEY THEREFORE DECIDED TO TERMINATE MR. BARRON IN DECEMBER SINCE THE HOSPITAL'S POPULATION DECREASED IN THAT MONTH AND ALSO THEY WOULD BE ABLE TO ELIMINATE THE POSITION OF A FLOAT ORDERLY FROM THEIR BUDGET WHICH THEY WERE IN THE PROCESS OF PREPARING FOR THE FIRST OF THE YEAR. ALTHOUGH ANOTHER ORDERLY WAS NEEDED FOR THE PSYCHIATRIC WARD THIS POSITION WAS NOT OFFERED TO MR. BARRON BECAUSE THEY FELT HE DID NOT POSSESS THE SPECIAL QUALIFICATIONS WHICH WERE REQUIRED FOR THOSE PATIENTS. THERE WAS NO EVIDENCE THAT OTHER OPENINGS WERE AVAILABLE THAT MR. BARRON WAS QUALIFIED TO FILL.

11. HAVING REGARD TO ALL THE EVIDENCE AND THE REPRESENTATIONS OF THE PARTIES, WE FIND THAT THE COMPLAINANT HAS FAILED TO ESTABLISH THAT MR. BARRON WAS DISCHARGED CONTRARY TO THE ACT. EVEN IF WE WERE TO FIND THAT MISS YOUNG AND MISS MAY WERE AWARE THAT MR. BARRON WAS THE "KEN" OR "KENT" REFERRED TO BY MISS CZERNY, THIS FACT STANDING ALONE WOULD NOT BE SUFFICIENT TO PERMIT THE BOARD TO DRAW THE INFERENCE THAT MR. BARRON WAS THEREFORE DISCHARGED BECAUSE OF HIS UNION ACTIVITIES. ON THE CONTRARY THE INSTRUCTIONS GIVEN TO MISS CZERNY THAT SHE WAS NOT TO EXPRESS ANY VIEWS FOR OR AGAINST THE UNION BUT WAS TO LEAVE THE MATTER FOR THE EMPLOYEES TO DECIDE TENDS TO INDICATE THAT MISS MAY AND MISS YOUNG HAD ADOPTED AN IMPARTIAL POSITION. AGAIN, MR. BARRON TESTIFIED THAT ALTHOUGH HE CAMPAIGNED OPENLY FOR A PERIOD OF ONE AND ONE-HALF MONTHS NO SUPERVISOR EVER SAID ANYTHING TO HIM ABOUT HIS ACTIVITIES.

12. ON THE OTHER HAND, THE EVIDENCE THAT CAME OUT FOR THE FIRST TIME AT THE HEARING CONCERNING HIS LACK OF PRIOR EXPERIENCE SUPPORTS THE RESPONDENT'S POSITION THAT IT WAS CONCERNED ABOUT THE DIFFICULTY IN PROVIDING ADEQUATE SUPERVISION AND TRAINING FOR MR. BARRON BECAUSE OF THE FACT HE WAS WORKING IN SO MANY DIFFERENT AREAS. AGAIN, HIS LACK OF PRIOR EXPERIENCE AND TRAINING CONFIRMS THE RESPONDENT'S OPINION THAT HE DID NOT POSSESS THE SPECIAL QUALIFICATIONS REQUIRED OF AN ORDERLY WORKING WITH PATIENTS IN THE PSYCHIATRIC DEPARTMENT AND THEREFORE COULD NOT BE TRANSFERRED TO THAT DEPARTMENT. THE EVIDENCE OF MISS CZERNY ALSO ESTABLISHES THAT THE RESPONDENT DID NOT ATTEMPT TO INTERFERE WITH THE UNION'S CAMPAIGN TO ORGANIZE THE RESPONDENT'S EMPLOYEES.

13. FINALLY, THERE WAS NOTHING IN THE TERMINATION INTERVIEW OR FOR THAT MATTER IN THE EVIDENCE AS A WHOLE WHICH CAST DOUBT ON THE BONA FIDES OF THE RESPONDENT'S REASONS FOR TERMINATING MR. BARRON.

14. WHILE THE EVIDENCE OF MISS MAY LEFT SOMETHING TO BE DESIRED, HOWEVER, ITS LACK OF EXPLICITNESS IN CERTAIN AREAS TENDS TO SUPPORT HER POSITION THAT SHE HAD NOT CONCERNED HERSELF ABOUT UNION ACTIVITY.

IF SHE HAD BEEN DELIBERATELY ATTEMPTING TO MISLEAD THE BOARD, IT WOULD HAVE BEEN AN EASY MATTER FOR HER TO BE PRECISE ABOUT SOME OF THE FACTS ON WHICH SHE WAS CROSS-EXAMINED.

15. FOR THE REASONS SET OUT ABOVE, WE FIND THAT THE COMPLAINANT HAS FAILED TO SATISFY THE ONUS ON IT OF ESTABLISHING THAT MR. BARRON WAS DISCHARGED BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF THE LABOUR RELATIONS ACT.

16. THE COMPLAINT IS THEREFORE DISMISSED.

1287-71-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) V. J. E. MARTEL & SONS LUMBER LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: FRANK V. BOSCARIOL, VICE-CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND E. BOYER.

DECISION OF THE BOARD: FEBRUARY 9, 1972.

1. IN THIS APPLICATION FOR CERTIFICATION, THE APPLICANT, SUBJECT TO CERTAIN EXCLUSIONS NOT HERE MATERIAL, SEEKS AN "ALL EMPLOYEE" BARGAINING UNIT ENCOMPASSING THOSE EMPLOYEES OF THE RESPONDENT EMPLOYED IN ITS WOODS OPERATIONS IN THE TOWNSHIP OF PATTINSON AND TOWNSHIPS IMMEDIATELY ADJACENT THERETO, TOGETHER WITH THOSE EMPLOYEES OF THE RESPONDENT EMPLOYED IN ITS MILL OPERATIONS IN THE TOWN OF CHAPLEAU.

2. PURSUANT TO THE DECISION OF THE BOARD DATED DECEMBER 9, 1971, AN EXAMINER WAS APPOINTED TO INQUIRE INTO THIS MATTER, WHICH CULMINATED IN THE REPORT OF THE EXAMINER DATED JANUARY 13, 1972.

3. THE FACTS AS DISCLOSED BY THE SAID REPORT ARE AS FOLLOWS: THE RESPONDENT'S MILL AND WOODS OPERATIONS ARE CONTROLLED BY A BOARD OF DIRECTORS CONSISTING OF THE MEMBERS OF THE MARTEL FAMILY. YVON MARTEL IS THE GENERAL MANAGER OF BOTH OPERATIONS. AS REGARDS THE WOODS OPERATIONS, ALDEE MARTEL ACTS IN THE CAPACITY OF WOODS MANAGER. THE MILL OPERATIONS INVOLVE JEAN MARTEL AS ITS SAWMILL MANAGER AND DENIS MARTEL ACTS IN THE CAPACITY OF SUPERINTENDENT FOR THE PLANING MILL YARD AND KILN.

4. AS OF THE TIME OF THIS APPLICATION, IT WOULD APPEAR THAT THE SITE OF THE WOODS OPERATION IS IN THE TOWNSHIP OF PATTINSON, APPROXIMATELY 30 MILES FROM THE MILL AT CHAPLEAU. IT SHOULD BE NOTED AT THIS POINT THAT THE TOWN OF CHAPLEAU IS NOT LOCATED IN THE TOWNSHIP OF PATTINSON, NOR IS IT SITUATED IN A TOWNSHIP ADJACENT THERETO.

5. THE WOODS OPERATIONS CONSISTS IN THE CUTTING AND SKIDDING OF TREES. THE TREES ARE THEN LOADED ON TRUCKS AND HAULED DOWN TO THE MILL AT CHAPLEAU. THE EVIDENCE OF YVON MARTEL FURTHER DISCLOSES THAT THESE HAULING OPERATIONS SHOULD BE INCLUDED IN THE WOODS OPERATIONS ALONG WITH THE MAKING AND MAINTENANCE OF ROADS AND THE MAINTENANCE OF ROLLING MACHINERY. IN THIS REGARD, THE TOOLS UTILIZED BY THE EMPLOYEES WOULD INCLUDE CHAIN SAW, SKIDDER MACHINE, TRACTOR GRADER AND TRUCKS. THE MILL OPERATIONS, ON THE OTHER HAND, INVOLVE THE APPLICATION OF THE "TREE LENGTHS" TAKEN FROM THE YARD TO THE SLASHER AND THEN TO THE BARKER. THE LUMBER IS THEN TAKEN FROM THE YARD AND PROCESSED THROUGH THE KILN OR PLANING MILL. ADDITIONAL EQUIPMENT USED IN THIS PROCESS WOULD INCLUDE THE "966" LOADER, SAWMILL, CARRY LIFT AND PLANER. THERE IS NO QUESTION THEREFORE, THAT THE TOOLS UTILIZED BY THE VARIOUS EMPLOYEES IN THE WOODS AND IN THE MILLS OPERATION, ARE ENTIRELY DIS-SIMILAR.

6. AS REGARDS THE EMPLOYEES THEMSELVES, IT WOULD APPEAR THAT THE RESPONDENT WOULD GROUP THE TRUCK DRIVERS OR "HAULERS" WITH THE WOODS EMPLOYEES. THE ONLY EVIDENCE IN THIS REGARD INDICATES THE THESE DRIVERS ARE PAID ON AN HOURLY RATE PLUS BONUS BASIS, BASED UPON THE NUMBER OF LOADS. THIS CREATES, IN EFFECT, A HYBRID SITUATION LYING SOMEWHERE BETWEEN THE MILL EMPLOYEES WHO ARE HOURLY RATED AND THE WOODS EMPLOYEES WHO ARE PAID UPON A PIECE WORK BASIS. THIS HYBRID SITUATION IS FURTHER ACCENTUATED BY THE FACT THAT WHILE THE MILL EMPLOYEES ARE PAID BI-MONTHLY, AND THE WOODS EMPLOYEES ARE PAID ONLY ONCE PER MONTH, THE DRIVERS ARE PAID BI-MONTHLY TOGETHER WITH A BONUS AT THE END OF THE MONTH. IN OUR OPINION A DEFINITE QUESTION ARISES AS TO WHETHER THESE EMPLOYEES HAVE A DEFINED COMMUNITY OF INTEREST WITH THE WOODS EMPLOYEES SO AS TO WARRANT THEIR INCLUSION IN THAT GROUP AS PROPOSED BY THE RESPONDENT. SINCE THE REPORT OF THE EXAMINER FAILS TO DEAL WITH THIS QUESTION, WE CAN MAKE NO FINDING AT THIS TIME ON THIS ISSUE.

7. IT WOULD FURTHER APPEAR THAT SEPARATE PAYROLLS FOR THE TWO OPERATIONS ARE MAINTAINED BY THE RESPONDENT. SIMILARLY, THERE ARE SEPARATE REMITTANCES FOR WORKMEN'S COMPENSATION CONTRIBUTIONS AND FOR INCOME TAX.

8. THERE IS VIRTUALLY NO EXCHANGE OF EMPLOYEES BETWEEN THE TWO OPERATIONS NOR ARE THERE PROMOTIONS FROM ONE TO THE OTHER.

9. WHILE THE MILL EMPLOYEES ARE REQUIRED TO PUNCH CARDS, THIS WOULD NOT APPEAR TO BE THE CASE WITH THE WOODS EMPLOYEES. FURTHER, THE WORKING HOURS OF THE MILL EMPLOYEES APPEAR TO BE CLEARLY DEFINED AND THERE IS PROVISION FOR THE PAYMENT OF OVERTIME AND FOR DOUBLE SHIFTS. THE WOODS EMPLOYEES, ON THE OTHER HAND, SEEM TO BE LESS CONFINED BY TIME LIMITATIONS.

10. BECAUSE OF THE GEOGRAPHICAL SEPARATION BETWEEN THESE TWO GROUPS, IT WOULD BE TRITE TO FURTHER OBSERVE THAT SEPARATE WASHROOM AND EATING FACILITIES ARE PROVIDED.

11. AS REGARDS THE OPERATIONS THEMSELVES, THERE APPEARS TO BE NO INTERDEPENDENCE BETWEEN THEM. THE OPERATION OF THE MILL IS NOT DEPENDENT ON THE OPERATION OF THE WOODS, AND VICE-VERSA. THE RESPONDENT CAN, AND HAS FROM TIME TO TIME, PURCHASED LOGS FROM OTHER SOURCES FOR ITS MILL. LIKewise, THE RESPONDENT CAN SELL ITS LOGS TO ANOTHER COMPANY AND NOT PROCESS THEM AT ITS OWN MILL.

12. WHEN CONFRONTED WITH THE PROBLEM AS TO WHETHER TO GRANT A COMPOSITE UNIT MADE UP OF BOTH WOODS AND MILL EMPLOYEES, THE BOARD HAS, IN THE PAST, LOOKED TO THE PROXIMITY OF THE RESPECTIVE LOCATIONS TO EACH OTHER, AS A SIGNIFICANT CONSIDERATION. THUS, IN CASES IN WHICH THE EMPLOYER ENGAGED IN BOTH WOODS AND MILL OPERATIONS WHERE THE CUTTING SITES WERE DISTANT FROM THE MILL, THE BOARD FOUND THAT SEPARATE UNITS OF WOODS AND MILL EMPLOYEES WOULD BE APPROPRIATE. (SEE THE ARROW LUMBER COMPANY CASE BOARD FILE No. 5899-54-R; THE ELOF CHRISTIANSON CASE BOARD FILE 6305-54-R; EMO LUMBER LIMITED BOARD FILE No. 11362-65-R). ON THE OTHER HAND, IN CASES WHERE THE CUTTING SITE AND MILL WERE IN THE SAME GENERAL VICINITY AND THE EMPLOYEES WERE FOUND TO BE INTERCHANGEABLE IN THE TWO OPERATIONS, SINGLE UNITS OF WOODS AND MILL OPERATIONS WERE FOUND TO BE APPROPRIATE. (SEE THE AUSTIN LUMBER (DALTON) LIMITED CASE BOARD FILE No. 12071-56-R; ISLAND COMPANY CASE BOARD FILE 17066-58-R).

13. HAVING REGARD TO ALL OF THESE FACTORS AND TAKING INTO ACCOUNT THE TOTALITY OF THE EVIDENCE AS DISCLOSED IN THE REPORT OF THE EXAMINER HEREIN, TOGETHER WITH THE WRITTEN REPRESENTATIONS OF THE PARTIES THERETO, AND APPLYING THE PRINCIPLES AS CITED ABOVE, WE FIND THAT A SINGLE "ALL EMPLOYEE" BARGAINING UNIT CONSISTING OF BOTH MILL AND WOODS EMPLOYEES TO BE INAPPROPRIATE IN THESE CIRCUMSTANCES, ON THE BASIS THAT THERE EXISTS NO COMMUNITY OF INTEREST BETWEEN THESE TWO GROUPS OF EMPLOYEES. IN ADDITION, WE FIND THAT THERE IS NOT A SUFFICIENT INTEGRATION OF THE MILL OPERATIONS WITH THE WOODS OPERATIONS. IN OUR OPINION, TWO BARGAINING UNITS ARE APPROPRIATE IN THESE CIRCUMSTANCES.

14. THE BOARD ACCORDINGLY FINDS THAT ALL EMPLOYEES OF THE RESPONDENT IN ITS WOODS OPERATIONS IN THE TOWNSHIP OF PATTINSON AND THOSE TOWNSHIPS IMMEDIATELY ADJACENT THERETO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, SCALERS, OFFICE AND SALES STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING, HEREINAFTER REFERRED TO AS BARGAINING UNIT #1.

15. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT

IN ITS MILL OPERATIONS AT CHAPLEAU, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, SCALERS, OFFICE AND SALES STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING, HEREINAFTER REFERRED TO AS BARGAINING UNIT #2.

16. FOR THE PURPOSE OF CLARITY, THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT KITCHEN STAFF ARE NOT INCLUDED IN THE ABOVE-DEFINED BARGAINING UNITS. HOWEVER, FOR THE REASONS AS SET OUT IN PARAGRAPH #6 HEREIN, THE BOARD IS IN NO POSITION TO DETERMINE INTO WHICH OF THE ABOVE-DEFINED BARGAINING UNITS, THE TRUCK DRIVERS SHOULD BE PLACED. THE SAME SITUATION WOULD APPEAR TO EXIST IN RELATION TO THE MECHANICS WHO APPEAR TO WORK OUT OF BOTH THE GARAGE AT THE MILL AND THE GARAGE LOCATED ON THE WOODS SITE.

17. AS REGARDS BARGAINING UNIT #1, WE FURTHER FIND, HAVING REGARD TO THE REPORT OF THE EXAMINER HEREIN, AND TAKING INTO ACCOUNT THE WRITTEN REPRESENTATIONS OF THE PARTIES THERETO, THAT GERALD BOUCHARD, DANIEL BAZINET AND EDDY DESROCHERS, EACH CLASSIFIED BY THE RESPONDENT AS "LUMBER GRADER", DO NOT EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(b) OF THE LABOUR RELATIONS ACT. WE FURTHER FIND, HAVING REGARD TO THE PARTICULAR CIRCUMSTANCES OF THIS CASE, THAT THESE EMPLOYEES (WHO PERFORM QUALITY CONTROL FUNCTIONS ONLY PART TIME), SHARE VIRTUALLY THE SAME COMMUNITY OF INTEREST WITH THE REMAINDER OF THE EMPLOYEES IN BARGAINING UNIT #1, AND ARE THEREFORE INCLUDED IN THE SAID BARGAINING UNIT. IN THIS REGARD, REFERENCE SHOULD BE HAD TO THE PRINCIPLES AS SET OUT IN THE ALMA PAINT AND VARNISH CO. LTD. CASE OLRB M.R. SEPTEMBER 1968, PAGE 551.

18. WE NOW FIND THAT THE REVISED LIST OF THE RESPONDENT TOTALS 87 NAMES. THE APPLICANT HAS SUBMITTED EVIDENCE OF MEMBERSHIP ON BEHALF OF 73 PERSONS AND OF THIS NUMBER, 67 NAMES WOULD APPEAR TO CORRESPOND WITH THE 87 NAMES NOW APPEARING ON THE RESPONDENT'S LIST. THERE IS ALSO ON FILE WITH THE BOARD TWO HANDWRITTEN STATEMENTS OF DESIRE BEARING IN TOTAL, THE SIGNATURES OF 33 PERSONS PURPORTING TO BE EMPLOYEES OF THE RESPONDENT, 12 OF WHOM WERE CLAIMED BY THE APPLICANT AS MEMBERS. IF, THEREFORE, WEIGHT WERE TO BE GIVEN TO THESE STATEMENTS OF DESIRE, IT WOULD REDUCE THE UNQUALIFIED EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT TO LESS THAN THE SIXTY-FIVE PER CENT REQUIREMENT FOR OUTRIGHT CERTIFICATION. THE PETITIONERS, ACCORDINGLY, WERE MADE AWARE AT THE ORIGINAL HEARING OF THIS MATTER ON DECEMBER 8, 1971, THAT SHOULD THE RELEVANCY OF THESE STATEMENTS BE SUBSEQUENTLY ESTABLISHED, THEN THE BOARD WOULD PROCEED AT SOME FUTURE DATE, TO INQUIRE INTO THE ORIGINATION, PREPARATION AND CIRCULATION OF THESE STATEMENTS. HOWEVER, THE BOARD PURSUANT TO PARAGRAPH #13 HAS FOUND THAT TWO BARGAINING UNITS ARE APPROPRIATE. THE LISTS FILED BY THE RESPONDENT THEREFORE FAIL TO DISCLOSE WHICH NAMES WOULD PROPERLY FALL WITHIN THE

BARGAINING UNITS AS DEFINED IN PARAGRAPHS #14 AND #15, HEREIN. THE SAME SITUATION PREVAILS IN RELATION TO THE "OVERLAPS" CONTAINED IN THE STATEMENTS OF DESIRE FILED. WE ARE THEREFORE, AS YET, NOT IN A POSITION TO DETERMINE WHETHER THESE PETITIONS ARE RELEVANT IN THESE CIRCUMSTANCES.

19. AT THE CONTINUATION OF HEARING OF THIS MATTER, THE BOARD PROPOSES TO INQUIRE INTO THE PRELIMINARY ISSUES RELATING TO THE TRUCK DRIVERS AND MECHANICS AS SET OUT IN PARAGRAPH #16 HEREIN. THE BOARD WILL THEN ENDEAVOUR TO SETTLE THE LIST PURSUANT TO ITS FINDING OF SEPARATE BARGAINING UNITS. WE SHALL THEN BE IN A POSITION TO DETERMINE THE RELEVANCY OF THE STATEMENTS OF DESIRE AND IF SO FOUND, WE WILL PROCEED TO INQUIRE INTO THEIR PREPARATION, ORIGINATION AND CIRCULATION.

20. BY LETTER DATED DECEMBER 14, 1971, THE APPLICANT FILED CHARGES WITH THE BOARD, ALLEGING, IN EFFECT MANAGEMENT PARTICIPATION IN RELATION TO THE STATEMENTS OF DESIRE. CERTAIN PARTICULARS OF THESE ALLEGATIONS WERE AMENDED BY A FURTHER LETTER TO THE BOARD DATED JANUARY 19, 1972. THE APPLICANT SEEKS TO SUBMIT EVIDENCE IN RESPECT TO THESE ALLEGATIONS AT THE CONTINUATION OF HEARING.

21. BY LETTER DATED JANUARY 11, 1972, THE RESPONDENT IN TURN FILED CHARGES WITH THE BOARD, ALLEGING, IN EFFECT, THAT THE APPLICANT HAD OBTAINED MEMBERSHIP CARDS BY FRAUD, REPRESENTATION, COERCION OR INTIMIDATION. BY LETTER DATED JANUARY 17, 1972, THE APPLICANT OBJECTED TO THE BOARD ENTERTAINING THESE ALLEGATIONS AT THE CONTINUATION OF HEARING ON THE BASIS THAT THEY ARE NOW UNTIMELY.

22. AS WAS STATED BY THE BOARD IN THE FEDERAL PACKAGING AND PARTITION COMPANY LIMITED CASE [1971] OLRB REP. JULY, PAGE 448 AT PAGE 455:

"THE GENERAL PRINCIPLES WHICH THE BOARD FOLLOWS IN DEALING WITH THE FILING OF CHARGES AND THE PROVIDING OF PARTICULARS ARE SET OUT IN THE FLECK MANUFACTURING LIMITED CASE 62 CLLC 1046:

IT IS INCUMBENT ON ALL PARTIES TO PROCEEDINGS BEFORE THE BOARD TO INVESTIGATE MATTERS RELEVANT TO THEIR CASES AS EARLY AS POSSIBLE AND IF THEY INTEND TO MAKE ALLEGATIONS OF IMPROPER OR IRREGULAR CONDUCT AGAINST ANOTHER PARTY TO DO SO PROMPTLY. THE OBJECT OF THIS REQUIREMENT, WHICH FINDS EXPRESSION IN SECTION 48 [NOW SECTION 47] OF THE RULES, IS OBVIOUSLY TO EXPEDITE AND FACILITATE THE HEARING AND PROCESSING OF

APPLICATIONS UNDER THE ACT AND TO AVOID PREJUDICE, DELAY OR EMBARRASSMENT TO THE PARTIES INVOLVED. DELAYED AND LAST-MINUTE ALLEGATIONS, WHICH LEAD TO ADJOURNMENTS OR CAUSE PREJUDICE, EMBARRASSMENT OR UNNECESSARY EXPENSE TO THE OTHER PARTIES, AND WHICH WITH REASONABLE DILIGENCE COULD HAVE BEEN MADE AT A MORE TIMELY STAGE OF THE PROCEEDINGS WILL NOT BE ENTERTAINED EXCEPT FOR GOOD AND SUFFICIENT CAUSE."

AT PAGE 456, THE BOARD CONTINUES:

"As has been stated, it was necessary for the Board to adjourn the hearing on June 2nd, before any evidence relating to the applicant's charges could be heard. The adjournment creates a new set of circumstances which require the Board to take into account factors which it was not necessary for the Board to consider in the above cited cases. The Board, however, has dealt with the issue of the late filing of charges in cases where the fact situations were more akin to those before us in the instant case. In the Muirhead Instruments Limited case OLRB M.R. October 1966 p. 449, a group of employees filed a document in opposition to an application for certification. The Board at the initial hearing did not inquire into the document and adjourned the hearing of the application for the purpose of appointing an examiner to inquire into the duties and responsibilities of certain persons who had been challenged as being managerial personnel. The applicant union requested leave of the Board to file charges relating to the petition although it acknowledge that the applicant had information concerning the charges approximately a week prior to the hearing. No reason, moreover, was given for the delay in filing the charges. The applicant union argued that since the matter was to be adjourned and a further hearing was necessitated, to inquire into the petition filed in opposition to the application, through no fault of the applicant, no one would suffer prejudice or additional expense and no further delay would be occasioned

IF THE APPLICANT WERE PERMITTED TO FILE CHARGES. THE BOARD HELD THAT THE REASONS SET OUT IN THE FLECK MANUFACTURING LIMITED CASE FOR REFUSING TO PERMIT THE LATE FILING OF ALLEGATIONS OF IMPROPER CONDUCT WERE NOT APPLICABLE IN THE MUIR-HEAD INVESTMENTS LIMITED CASE. THE BOARD FOUND RATHER THAT SINCE IT WAS FACED WITH THE NECESSITY OF AN ADJOURNMENT WHICH WAS NOT AT THE REQUEST OR THROUGH THE MANOEUVRING OF THE PARTY DESIRING TO MAKE CHARGES, THE BOARD COULD NOT FIND ANY REAL REASON FOR REFUSING PERMISSION TO THE APPLICANT TO MAKE ITS CHARGES. THE BOARD IN THAT CASE ACCORDINGLY PERMITTED THE APPLICANT TO FILE ITS CHARGES RELATING TO THE PETITION."

23. HAVING REGARD TO THESE PRINCIPLES AND SHOULD THE RELEVANCY OF THE STATEMENTS OF DESIRE BE ESTABLISHED PURSUANT TO PARAGRAPH #19 HEREIN, THE BOARD WILL ACCORDINGLY ENTERTAIN THE EVIDENCE RELATING TO THE CHARGES REFERRED TO IN PARAGRAPH #20 HEREIN FILED BY THE APPLICANT. IN LIKE MANNER, WE CAN SEE NO REASON TO REFUSE TO ALSO ENTERTAIN AT THIS TIME, THE EVIDENCE RELATING TO THE CHARGES REFERRED TO IN PARAGRAPH #21 HEREIN FILED BY THE RESPONDENT.

24. THE MATTER IS ACCORDINGLY REFERRED TO THE REGISTRAR FOR CONTINUATION OF HEARING ON ALL OUTSTANDING ISSUES.

1385-71-U: CANADIAN UNION OF PUBLIC EMPLOYEES (COMPLAINANT) V. TORONTO GENERAL HOSPITAL (RESPONDENT).

BEFORE: G. W. REED, Q.C., AND BOARD MEMBERS E. BOYER AND F. W. MURRAY.

DECISION OF THE BOARD: FEBRUARY 10, 1972.

1. THIS IS A COMPLAINT UNDER SECTION 79 OF THE LABOUR RELATIONS ACT. IN ACCORDANCE WITH ITS USUAL PRACTICE, THE BOARD APPOINTED A FIELD OFFICER TO INQUIRE INTO THE COMPLAINT AND TO REPORT TO THE BOARD.

2. THE FIELD OFFICE HAS NOW REPORTED THAT THE GRIEVOR, EMMANUEL CHRISAFAKIS, HAS NEVER APPEARED BEFORE HIM TO MAKE A STATEMENT, ALTHOUGH GIVEN EVERY OPPORTUNITY TO DO SO. THE FIELD OFFICER DEALT WITH BOTH THE SOLICITOR FOR THE COMPLAINANT WHO FILED THE APPLICATION ON BEHALF OF THE COMPLAINANT AND WITH A REPRESENTATIVE OF THE COMPLAINANT. THEY WERE UNSUCCESSFUL IN THEIR EFFORTS TO HAVE THE GRIEVOR APPEAR BEFORE THE FIELD OFFICER. ULTIMATELY THE GRIEVOR WAS ADVISED BY LETTER THAT IF HE DID NOT COME FORWARD AND MAKE A STATEMENT, THE FIELD OFFICE WOULD SUBMIT HIS REPORT TO THE BOARD WITHOUT ANY STATEMENT.

3. HAVING REGARD TO THE ABOVE CONSIDERATIONS, THE BOARD DOES NOT INTEND TO INQUIRE INTO THE COMPLAINT BY MEANS OF A HEARING BY THE BOARD. THE COMPLAINT IS ACCORDINGLY DISMISSED.

872-71-U: THE INTERNATIONAL BROTHERHOOD OF PAINTERS AND ALLIED TRADES - LOCAL UNION 1783 (COMPLAINANT) V. FANSHAW PAINTING LIMITED (RESPONDENT).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS P. J. O'KEEFFE AND H. F. IRWIN.

DECISION OF THE BOARD:

FEBRUARY 14, 1972.

1. THE RESPONDENT HAS REQUESTED THE BOARD TO REVIEW ITS DECISION DATED JANUARY 5, 1972 WITH RESPECT TO THE AMOUNT OF WAGES FOUND TO HAVE BEEN LOST BY ROBERT DEVOST AND ALISTAIR MCTURK.

2. THE REQUEST INVITES THE BOARD TO CONSULT THE FIELD OFFICER'S REPORT IN THIS MATTER INSOFAR AS THE MONETARY LOSSES ARE CONCERNED. WE WISH TO MAKE IT QUITE CLEAR TO THE RESPONDENT THAT THE REPORT OF THE FIELD OFFICER IS NEVER REFERRED TO BY THE PANEL OF THE BOARD WHICH HEARS THE COMPLAINT. SUCH PANEL, AS DID THE PRESENT ONE, REACHES ITS DECISION SOLELY UPON THE EVIDENCE ADDUCED BY THE PARTIES AT THE HEARING.

3. THE EVIDENCE WITH RESPECT TO DEVOST ESTABLISHED THAT HE WAS OUT OF WORK FOR ONE DAY AT A LOSS OF \$32.00. HOWEVER, FROM AUGUST 16TH UNTIL SEPTEMBER 16TH, HE EARNED 50¢ PER HOUR LESS THAN HE HAD BEEN MAKING WHILE EMPLOYED BY THE RESPONDENT. THE AMOUNT OF HIS LOSSES WAS BASED UPON THESE CIRCUMSTANCES.

4. THE MONETARY LOSS SUFFERED BY MCTURK IS BASED UPON HIS UN-CONTRADICTED EVIDENCE THAT HE OBTAINED WORK ON AUGUST 31, 1971 AT A RATE OF \$3.00 PER HOUR, WHEREAS HE HAD BEEN EARNING \$4.00 PER HOUR. HE PROGRESSED, ON THE NEW JOB, TO \$3.75 PER HOUR AND FINALLY TO \$4.00 PER HOUR. THE MOUNT OF HIS LOSSES WAS BASED UPON THESE CIRCUMSTANCES.

5. HAVING REGARD TO THE FOREGOING, THE BOARD DOES NOT CONSIDER IT ADVISABLE TO VARY OR REVOKE ITS DECISION DATED JANUARY 5, 1972 AND THE REQUEST OF THE RESPONDENT IS THEREFORE DENIED.

1550-71-R: INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION 120 (APPLICANT) V. FREEMAN ELECTRIC LIMITED (RESPONDENT).

BEFORE: R.A. FURNESS, VICE CHAIRMAN AND BOARD MEMBERS E. BOYER AND F.W. MURRAY.

DECISION OF THE BOARD:

FEBRUARY 15, 1972.

1. THE NAME "INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL UNION 120, 300 OAKLAND AVENUE, LONDON 31, ONTARIO", APPEARING IN THE STYLE OF CAUSE OF THIS APPLICATION AS THE NAME OF THE APPLICANT IS AMENDED TO READ: "INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION 120", AND THE NAME "FREEMAN ELECTRIC LIMITED, 98 SOUTH, W., AYLMER, ONTARIO" APPEARING IN THE STYLE OF CAUSE OF THIS APPLICATION AS THE NAME OF THE RESPONDENT IS AMENDED TO READ: "FREEMAN ELECTRIC LIMITED".
2. THE APPLICANT FILED FIVE APPLICATIONS FOR MEMBERSHIP ACCOMPANIED BY RECEIPTS. THE APPLICATIONS ARE SIGNED BY THE EMPLOYEES AND THE RECEIPTS ARE COUNTERSIGNED AND THREE OF THE RECEIPTS INDICATE THAT A PAYMENT OF AT LEAST \$1.00 HAS BEEN MADE WITHIN THE SIX MONTH PERIOD IMMEDIATELY PRECEDING THE TERMINAL DATE OF THE APPLICATION. TWO OF THE RECEIPTS DO NOT INDICATE THAT A PAYMENT OF AT LEAST \$1.00 HAS BEEN MADE BY THE PERSONS APPLYING FOR MEMBERSHIP IN THE APPLICANT. THE MONEY WAS COLLECTED BY ONE PERSON. THE APPLICANT ALSO FILED A DULY COMPLETED FORM 54, DECLARATION CONCERNING MEMBERSHIP DOCUMENTS, CONSTRUCTION INDUSTRY.
3. THE RESPONDENT FILED A REPLY, SCHEDULES A AND D CONTAINING THE NAMES OF FIVE PERSONS AND SPECIMEN SIGNATURES WITHIN THE TIME FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE. SCHEDULE A CONTAINS THE NAMES OF FOUR EMPLOYEES AND THE NAMES APPEARING ON FOUR OF THE APPLICATIONS FOR MEMBERSHIP ACCOMPANIED BY RECEIPTS CORRESPOND TO NAMES APPEARING ON SCHEDULE A.

IN APPLICATIONS FOR CERTIFICATION FILED UNDER THE CONSTRUCTION INDUSTRY PROVISIONS OF THE LABOUR RELATIONS ACT, IT HAS NOT BEEN THE PRACTICE OF THE BOARD TO INCLUDE IN THE BARGAINING UNIT FOR THE PURPOSES OF THE COUNT, PERSONS WHO WERE NOT AT WORK ON THE DATE OF THE MAKING OF THE APPLICATION AND ACCORDINGLY, THE ONE NAME WHICH APPEARS ON SCHEDULE D IS NOT INCLUDED FOR THE PURPOSES OF THE COUNT.
4. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(N) OF THE LABOUR RELATIONS ACT.
5. THE BOARD FURTHER FINDS THAT THIS IS AN APPLICATION FOR CERTIFICATION WITHIN THE MEANING OF SECTION 108 OF THE LABOUR RELATIONS ACT.
6. THE JOB SITES AFFECTED BY THIS APPLICATION ARE IN THE COUNTY OF ELGIN. THE COUNTY OF ELGIN IS IN REGULAR BOARD GEOGRAPHIC AREA #3 WHICH CONSISTS OF THE COUNTIES OF OXFORD, PERTH, HURON, MIDDLESEX, BRUCE AND ELGIN. THE APPLICANT IS SEEKING CERTIFICATION ON BEHALF OF A UNIT OF EMPLOYEES DESCRIBED AS:

"ALL ELECTRICIANS, APPRENTICES, FOREMEN AND GENERAL FOREMEN OF THE RESPONDENT SAVE AND EXCEPT THE SUPERINTENDENT AND THOSE ABOVE THE RANK OF SUPERINTENDENT EMPLOYED IN THE FOLLOWING GEOGRAPHIC AREAS: MIDDLESEX, HURON, OXFORD AND ELGIN COUNTIES".

THE RESPONDENT HAS CLAIMED THAT THE UNIT OF EMPLOYEES APPROPRIATE FOR COLLECTIVE BARGAINING OUGHT TO BE DESCRIBED AS:

"THREE MEMBERS ONLY AND THE GEOGRAPHICAL AREA AFFECTED IS ONLY THE COUNTY OF ELGIN".

7. IN PARAGRAPH 13 OF ITS REPLY, THE RESPONDENT HAS STATED:

"(1) #1, BROCK BARRETT, IS A PROBATIONARY EMPLOYEE, NOT AN APPRENTICE, WHOSE PERIOD OF PROBATION WILL NOT EXPIRE UNTIL MARCH 16, 1972.

(2) THE EMPLOYEE, TOM O'REILLY, FAILED TO REPORT FOR WORK ON FEBRUARY 1, 1972, AND HAS NOT COME BACK SINCE AND HIS EMPLOYMENT IS TERMINATED".

IN ADDITION, THE RESPONDENT HAS IN SUPPORT OF ITS REQUEST FOR A HEARING OF THIS APPLICATION BY THE BOARD, STATED IN PARAGRAPH 14(3) OF ITS REPLY:

"IF THE SUBMISSIONS BY THE RESPONDENT IN PARAGRAPH 13 ABOVE ARE UPHELD BY THE BOARD THEN THE BARGAINING UNIT APPROPRIATE FOR COLLECTIVE BARGAINING IS COMPOSED OF THREE (3) MEMBERS.

THE EMPLOYER ONLY CARRIES ON BUSINESS IN THE COUNTY OF ELGIN AND THE OTHER COUNTIES, MIDDLESEX, HURON AND OXFORD, ARE NOT APPLICABLE.

8. THE BOARD HAS CONSIDERED THE REPRESENTATIONS OF THE PARTIES WITH RESPECT TO THE UNIT OF EMPLOYEES APPROPRIATE FOR COLLECTIVE BARGAINING. THE FACT THAT AN EMPLOYER PRESENTLY CARRIES ON BUSINESS IN ONE COUNTY WITHIN A REGULAR BOARD GEOGRAPHIC AREA HAS NOT BEEN HELD BY THE BOARD TO BE A REASON FOR CONFINING THE GEOGRAPHICAL AREA IN A UNIT OF EMPLOYEES APPROPRIATE FOR COLLECTIVE BARGAINING TO THAT ONE

COUNTY. THE BOARD SEES NO REASON IN THE CIRCUMSTANCES OF THIS APPLICATION TO DEPART FROM DEFINING THE UNIT OF EMPLOYEES APPROPRIATE FOR COLLECTIVE BARGAINING WITH REFERENCE TO REGULAR BOARD GEOGRAPHIC AREA #3.

9. THE BOARD FURTHER FINDS THAT ALL ELECTRICIANS AND ELECTRICIANS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF OXFORD, PERTH, HURON, MIDDLESEX, BRUCE AND ELGIN, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

10. FROM INFORMATION RECEIVED FROM THE RESPONDENT IT APPEARS THAT BROCK BARRETT WAS HIRED BY THE RESPONDENT TO DO ELECTRICAL WORK AND THAT ON THE DATE OF THE MAKING OF THE APPLICATION HE WAS ENGAGED IN WORK PERFORMED BY EMPLOYEES IN THE BARGAINING UNIT. THE BOARD ACCORDINGLY FINDS THAT THE LIST FOR THE PURPOSES OF THE COUNT CONSISTS OF THE FOUR NAMES ON SCHEDULE A FILED BY THE RESPONDENT.

11. THE APPLICANT HAS FILED SATISFACTORY EVIDENCE OF MEMBERSHIP IN THE APPLICANT WITH RESPECT TO TWO OF THE FOUR PERSONS WHOSE NAMES APPEAR ON SCHEDULE A FILED BY THE RESPONDENT. THE TWO APPLICATIONS FOR MEMBERSHIP IN THE APPLICANT ACCOMPANIED BY RECEIPTS, WHICH DO NOT INDICATE THE PAYMENT OF AT LEAST ONE DOLLAR TO THE APPLICANT BY THE PERSON WHO HAS APPLIED FOR MEMBERSHIP IN THE APPLICANT, DO NOT SATISFY THE BOARD'S STANDARDS RESPECTING EVIDENCE OF MEMBERSHIP. REFERENCE IS MADE TO SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.

12. THE APPLICANT HAS REQUESTED A HEARING OF THIS APPLICATION BY THE BOARD. IN APPLICATIONS FOR CERTIFICATION FILED UNDER THE CONSTRUCTION INDUSTRY PROVISIONS OF THE LABOUR RELATIONS ACT THE BOARD NEED NOT HOLD A HEARING. REFERENCE IS MADE TO SECTION 91(13) OF THE LABOUR RELATIONS ACT. IT IS THE PRACTICE OF THE BOARD IN APPLICATIONS FOR CERTIFICATION FILED UNDER THE CONSTRUCTION INDUSTRY PROVISIONS OF THE LABOUR RELATIONS ACT TO HOLD A HEARING ONLY WHERE A USEFUL PURPOSE WOULD BE SERVED.

13. THE BOARD HAS CONSIDERED THE MATTERS RAISED BY THE RESPONDENT IN PARAGRAPH 14(3) OF ITS REPLY AND IS OF THE OPINION THAT NO USEFUL PURPOSE WOULD BE SERVED IN HOLDING A HEARING IN THIS MATTER. THE REQUEST OF THE RESPONDENT FOR A HEARING OF THIS APPLICATION BY THE BOARD IS ACCORDINGLY DENIED. IN THE EVENT THAT THE RESPONDENT IS OF THE OPINION THAT THE BOARD HAS ERRED IN A MATERIAL WAY IT IS OPEN TO THE RESPONDENT TO REQUEST THE BOARD TO RECONSIDER ITS DECISION IN THIS MATTER PURSUANT TO SECTION 95(1) OF THE LABOUR RELATIONS ACT.

14. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT NOT LESS THAN THIRTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON FEBRUARY 11, 1972, THE TERMINAL DATE FIXED FOR THIS APPLICANT AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 92(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

15. A REPRESENTATION VOTE WILL BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT. ALL EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

16. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BE REPRESENTED BY THE APPLICANT IN THEIR EMPLOYMENT RELATIONS WITH THE RESPONDENT.

17. THE MATTER IS REFERRED TO THE REGISTRAR.

1506-71-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 837 (APPLICANT) v. AIKEN, BARRON & ROEPKE LIMITED (RESPONDENT).

BEFORE: R.A. FURNESS, VICE CHAIRMAN AND BOARD MEMBERS E. BOYER AND F.W. MURRAY.

APPEARANCES AT THE HEARING: HENRI MANCINELLI, JOHN VELLA AND M.J. REILLY FOR THE APPLICANT; DAVID L. STEPHENS FOR THE RESPONDENT.

DECISION OF THE BOARD: FEBRUARY 14, 1972.

1. THE NAME "AIKEN BARON & ROEPKE LTD." APPEARING IN THE STYLE OF CAUSE OF THIS APPLICATION AS THE NAME OF THE RESPONDENT IS AMENDED TO READ: "AIKEN, BARRON & ROEPKE LIMITED".

2. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(N) OF THE LABOUR RELATIONS ACT.

3. THE BOARD FURTHER FINDS THAT THIS IS AN APPLICATION FOR CERTIFICATION WITHIN THE MEANING OF SECTION 108 OF THE LABOUR RELATIONS ACT.

4. THE APPLICANT IS SEEKING CERTIFICATION ON BEHALF OF A UNIT OF EMPLOYEES OF THE RESPONDENT DESCRIBED AS:

"ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF NIAGARA AND THE COUNTY OF HALDIMAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN."

5. THE RESPONDENT TAKES THE POSITION THAT THE APPLICATION IS UNTIMELY BECAUSE THE APPLICANT ALREADY HAS A COLLECTIVE AGREEMENT WITH THE RESPONDENT WITH RESPECT TO THE UNIT OF EMPLOYEES AFFECTED BY THIS APPLICATION AND REFERRED TO IN PARAGRAPH FOUR HEREIN.

6. THE EVIDENCE BEFORE THE BOARD ESTABLISHED THAT ON MAY 11, 1970 THE RESPONDENT WAS A MEMBER OF THE NIAGARA CONSTRUCTION ASSOCIATION (HEREINAFTER REFERRED TO AS THE "ASSOCIATION") AND THAT THE ASSOCIATION REPRESENTED THE RESPONDENT, BARGAINED ON BEHALF OF THE RESPONDENT WITH THE APPLICANT AND ENTERED INTO A COLLECTIVE AGREEMENT WITH RESPECT TO THE EMPLOYEES AFFECTED BY THIS APPLICATION. THIS COLLECTIVE AGREEMENT WAS, BY ITS TERMS, EFFECTIVE ON MAY 11, 1970 AND REMAINED IN EFFECT UNTIL APRIL 30, 1971.

7. IN AN AGREEMENT DATED JUNE 16, 1971, A NEW COLLECTIVE AGREEMENT WAS ENTERED INTO BETWEEN THE APPLICANT AND THE ASSOCIATION. THE COLLECTIVE AGREEMENT WHICH, BY ITS TERMS, EXPIRED ON APRIL 30, 1971 WAS EXTENDED, WITH CERTAIN MODIFICATIONS, NOT HERE RELEVANT, UNTIL APRIL 30, 1972. THERE WAS NO RELIABLE EVIDENCE BEFORE THE BOARD CONCERNING ANY LAPSE IN THE RESPONDENT'S MEMBERSHIP IN THE ASSOCIATION. HOWEVER, IT IS QUITE CLEAR THAT THE RESPONDENT WAS BOUND BY THE COLLECTIVE AGREEMENT WITH THE APPLICANT WHICH BECAME EFFECTIVE ON MAY 11, 1970. IN THE EVENT THAT THE RESPONDENT CEASED TO BE A MEMBER OF THE ASSOCIATION DURING THE PERIOD OF THIS EARLIER COLLECTIVE AGREEMENT, IT IS CLEAR THAT IT WOULD BE A PARTY TO A LIKE COLLECTIVE AGREEMENT WITH THE APPLICANT. REFERENCE IS MADE TO SECTION 43(1) OF THE LABOUR RELATIONS ACT.

8. SIMILAR REASONING, OF COURSE, APPLIES IF THE RESPONDENT CEASED TO BE A MEMBER OF THE ASSOCIATION DURING THE PERIOD OF THE NEW COLLECTIVE AGREEMENT. IN ADDITION, IF THE RESPONDENT WAS NOT A MEMBER OF THE ASSOCIATION AT THE TIME THE LATTER SIGNED THE NEW COLLECTIVE AGREEMENT WITH THE APPLICANT AND THE APPLICANT HAD BEEN NOTIFIED IN WRITING BEFORE THE NEW COLLECTIVE AGREEMENT WAS ENTERED INTO THAT THE RESPONDENT WOULD NOT BE BOUND BY IT THEN THE RESPONDENT IS NOT BOUND BY THIS NEW COLLECTIVE AGREEMENT. REFERENCE IS MADE TO SECTION 43(2) OF THE LABOUR RELATIONS ACT. IN THIS LATTER SITUATION, HOWEVER, THE APPLICANT WOULD STILL HAVE BARGAINING RIGHTS WITH RESPECT TO THE EMPLOYEES AFFECTED BY THIS APPLICATION.

9. THE RESPONDENT AND THE APPLICANT ARE THEREFORE EITHER BOUND BY A COLLECTIVE AGREEMENT WITH RESPECT TO THE EMPLOYEES AFFECTED BY THIS APPLICATION, ON THE ONE HAND, OR, ON THE OTHER HAND, THE APPLICANT HAS BARGAINING RIGHTS WITH RESPECT TO THE EMPLOYEES AFFECTED BY THIS APPLICATION.

10. HAVING REGARD TO THE FOREGOING, THIS PROCEEDING IS TERMINATED.

1386-71-U: THE CARPENTERS' DISTRICT COUNCIL OF TORONTO AND VICINITY, ON BEHALF OF LOCAL UNION NOS. 27; 666; 681; 1133; 1747; 1963; 3227 AND 3233 OF THE UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA AND JACK CLINTON AND ANDY CLIFFORD (APPLICANTS) V. WOOD, WIRE & METAL LATHERS' INTERNATIONAL UNION LOCAL 562, KENNETH WELLER & GUS SIMONE (RESPONDENTS).

BEFORE: O.B. SHIME, VICE-CHAIRMAN, AND BOARD MEMBERS O. HODGES AND H.F. IRWIN.

APPEARANCES AT THE HEARING: WILLIAM MORRIS, FRED LEGER AND L. McLEAN FOR THE APPLICANTS; RAYMOND KOSKIE AND JEFFREY SLOPEN FOR THE RESPONDENT.

DECISION OF THE BOARD: FEBRUARY 16, 1972.

1. IN THIS MATTER THE RESPONDENT HAS MADE A NUMBER OF PRELIMINARY OBJECTIONS WHICH ARE AS FOLLOWS:

- (A) THAT THE APPLICANTS DO NOT HAVE STATUS TO MAINTAIN THIS APPLICATION;
- (B) THAT A MORE APPROPRIATE REMEDY IS TO DEAL WITH THE ISSUES RAISED BY WAY OF A JURISDICTIONAL DISPUTE;
- (C) THAT AS A MATTER OF POLICY THIS BOARD SHOULD ADOPT A PROCEDURE PARALLEL TO THE PROCEDURE OF THE NATIONAL LABOR RELATIONS BOARD IN THE UNITED STATES;
- (D) THAT THERE IS A LACK OF PARTICULARITY IN THE APPLICATION.

WE PROPOSE TO DEAL WITH THE OBJECTIONS SERIATIM.

2. THE FIRST OBJECTION IS THAT THE APPLICATIONS DO NOT HAVE STATUS. IT APPEARS FROM THE ALLEGATIONS THAT THERE IS A JURISDIC-

TIONAL DISPUTE BETWEEN THE APPLICANT, THE CARPENTERS DISTRICT COUNCIL OF TORONTO AND VICINITY, ON BEHALF OF LOCAL UNIONS NOS. 27; 666; 681; 1133; 1747; 1963; 3227 AND 3233 OF THE UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA (HEREINAFTER REFERRED TO AS THE 'CARPENTERS') AND THE RESPONDENT, WOOD, WIRE & METAL LATHERS' INTERNATIONAL UNION LOCAL 562, (HEREINAFTER REFERRED TO AS THE 'LATHERS'). THE INDIVIDUAL APPLICANTS APPEAR TO BE ASSOCIATED WITH THE CARPENTERS AND THE INDIVIDUAL RESPONDENTS WITH THE LATHERS. IT IS FURTHER ALLEGED THAT THE RESPONDENTS IN PURSUIT OF THEIR JURISDICTIONAL CLAIM THREATENED AN UNLAWFUL STRIKE WHICH ULTIMATELY AFFECTED THE APPLICANTS.

3. IN OUR OPINION THE APPLICATION FOR CONSENT TO PROSECUTE DIFFERS FROM OTHER MATTERS BEFORE THIS BOARD IN THAT THE APPLICATION IS OF A PUBLIC NATURE RATHER THAN A PRIVATE ONE. AS SUCH, THERE IS A PUBLIC INTEREST IN AN APPLICATION FOR CONSENT TO PROSECUTE WHICH DOES NOT OBTAIN IN OTHER MATTERS, AND ACCORDINGLY WE ARE OF THE OPINION THAT WE SHOULD NOT ADOPT A RESTRICTED OR LIMITED VIEW OF THE PERSONS WHO ARE ABLE TO BRING THE APPLICATION.

4. IF THIS APPLICATION WAS SUCCESSFUL THE APPLICANT WOULD BE REQUIRED TO SUBSEQUENTLY APPEAR BEFORE A JUSTICE OF THE PEACE AND SWEAR AN INFORMATION PURSUANT TO THE PROCEDURES CONTAINED IN PART XXIV OF THE CRIMINAL CODE CONCERNING SUMMARY CONVICTIONS. IN THAT PART UNDER SECTION 692 AN INFORMANT "MEANS A PERSON WHO LAYS AN INFORMATION". THAT DEFINITION GIVES CONSIDERABLE FLEXIBILITY AS TO WHO MAY BRING A MATTER OF PUBLIC CONCERN BEFORE THE COURTS. UNDER MOST PROVINCIAL ACTS MATTERS PROCEED DIRECTLY TO THE COURTS UPON THE LAYING OF INFORMATION. HOWEVER, UNDER THE LABOUR RELATIONS ACT THE CONSENT OF THIS BOARD IS INTERPOSED PRIOR TO THE LAYING OF AN INFORMATION AND WE DO NOT SEE WHY THAT PROCEDURAL STEP ALONE SHOULD LIMIT PERSONS WHO MAY BRING QUASI CRIMINAL OR PENAL MATTERS TO THE ATTENTION OF THE SUMMARY CONVICTION COURT. WE DO NOTE THAT IN AN APPROPRIATE CASE THE RELATIONSHIP OF THE APPLICANT TO THE SITUATION MAY BE A FACTOR IN THE GRANTING OF CONSENT AS A MATTER OF DISCRETION.

5. WE ARE SATISFIED, HOWEVER, THAT IN THIS CASE THE APPLICANTS ARE PERSONS WHO MAY BE AFFECTED BY THE ACTS COMPLAINED ABOUT AND THEREFORE BEAR A SUFFICIENT RELATIONSHIP TO THE SITUATION TO GRANT THEM STATUS TO BRING THIS APPLICATION. THE FIRST OBJECTION IS THEREFORE DENIED.

6. THE SECOND OBJECTION IS THAT THERE IS A JURISDICTIONAL DISPUTE AND THE ISSUE SHOULD BE RESOLVED IN A HEARING PROPERLY BROUGHT UNDER SECTION 81 OF THE ACT WHICH PROVIDES A METHOD OF RESOLUTION FOR JURISDICTIONAL DISPUTES. SECTION 81 IS NOT UNLIKE OTHER PROVISIONS OF THE ACT WHICH ARE INTENDED TO SECURE INDUSTRIAL PEACE THROUGH COLLECTIVE BARGAINING. WHILE THE ACT CONTAINS A NUMBER OF PROCEDURE DE-

SIGNED TO SECURE INDUSTRIAL PEACE IT ALSO CONTAINS PROVISIONS DESIGNED TO REMEDY CONDUCT THAT DOES NOT CONFORM TO THE ACT AND WHICH LEADS TO INDUSTRIAL DISRUPTION. THESE REMEDIAL PROCEDURES MAY BE BY WAY OF A PRIVATE REMEDY BETWEEN THE PARTIES SUCH AS SECTION 79 OF THE ACT. SECTION 81 WHICH IS A JURISDICTIONAL DISPUTE PROCEDURE PROVIDING AN INTERIM REMEDY IN THE CASE OF A STRIKE OR AN ALLEGED STRIKE IS ALSO OF A PRIVATE NATURE. BUT, AS WE HAVE INDICATED, A CONSENT TO PROSECUTE AND THE SUBSEQUENT PROSECUTION PROCEDURES ARE PUBLIC AND REFLECT A PUBLIC DISAPPROVAL OF CONDUCT WHICH VIOLATES THE LABOUR RELATIONS ACT. THERE IS NO REASON WHY A PARTY SHOULD BE PERMITTED TO VIOLATE THE ACT WITH IMPUNITY OR SEEK REFUGE IN THE PRIVATE REMEDIAL PROVISIONS OF THE ACT AND ESCAPE THE SANCTIONS AND PUBLIC DISAPPROVAL INHERENT IN THE PROSECUTION. IN THIS CASE WE ARE NOT PREPARED AS A PRELIMINARY MATTER TO REMOVE THE RESPONDENTS FROM THE PUBLIC SANCTION IMPOSED BY THE ACT AND LEAVE THE PARTIES TO THEIR PRIVATE REMEDY UNDER SECTION 81, AND THE PRELIMINARY OBJECTION ON THIS POINT IS DENIED.

7. THE THIRD OBJECTION RAISED CONCERNS THE PROCEDURE UNDER SECTION 8(B)(4)(D) AND SECTION 10(K) OF THE LABOUR MANAGEMENT RELATIONS ACT IN THE UNITED STATES. THAT PROCEDURE IS QUITE UNLIKE THE PROCEDURES CONTAINED IN OUR ACT. FURTHER, THE STATUTORY POLICY EXPRESSLY PROVIDED FOR IN THAT ACT ENABLES THE NATIONAL LABOR RELATIONS BOARD TO HEAR JURISDICTIONAL DISPUTES OUT OF WHICH AN "UNFAIR LABOUR PRACTICE SHALL HAVE ARISEN UNLESS...THE PARTIES TO SUCH DISPUTE ADJUST OR AGREE UPON A METHOD FOR VOLUNTARILY ADJUSTMENT OF THE DISPUTE". THE SECTION 10(K) PROCEEDING IS A DECISION ON THE MERITS BUT IT BINDS NO ONE. HOWEVER, A SECTION 10(K) DETERMINATION IS ENFORCED BY PROCEEDING WITH THE SECTION 8(B)(4)(D) COMPLAINT AGAINST AN OFFENDING PARTY WHO MAY BE FOUND GUILTY OF AN UNFAIR LABOUR PRACTICE. THE PROCEDURE FOR DISMISSING THE CHARGE WHERE THE PARTIES HAVE COMPLIED WITH THE ORDER OR AGREED TO A VOLUNTARY ADJUSTMENT IS EXPRESSLY PROVIDED FOR BY THE STATUTE AND CREATES A RELATIONSHIP BETWEEN THE CHARGE AND A DETERMINATION ON THE MERITS. THE FUNCTION OF THE CHARGE IS TO ENFORCE THE DETERMINATION ON THE MERITS OR TO GET THE PARTIES TO VOLUNTARILY ADJUST THE DISPUTE. THE PROCEDURE IS UNLIKE OUR PROCEDURE WHICH PERMITS ENFORCEMENT ON INTERIM ORDERS OR DIRECTIONS BY FILING SUCH ORDER OR DIRECTION IN THE SUPREME COURT OF ONTARIO WHERE IT MAY BE ENFORCED AS A JUDGMENT OR ORDER OF THAT COURT. THEREFORE, UNLIKE THE UNITED STATES LEGISLATION, THERE IS NO DIRECT STATUTORY RELATIONSHIP BETWEEN THE JURISDICTIONAL DISPUTE PROVISIONS AND THE CONSENT TO PROSECUTE PROVISIONS UNDER OUR ACT. THEY MERELY EXIST AS CONCURRENT REMEDIES AND ACCORDINGLY THE ARGUMENT ADVANCED BY THE RESPONDENTS IS NOT APPLICABLE TO THE PROCEDURES IN THIS JURISDICTION. THE PRELIMINARY OBJECTION ON THAT GROUND IS ALSO DENIED.

8. THE NEXT OBJECTION MADE IS WITH RESPECT TO THE LACK OF PARTICULARS. IN OUR VIEW THE LACK OF PARTICULARS, IF ANY, DO NOT RENDER THE CHARGES A NULLITY. THERE IS A SUFFICIENT SUBSTANTIVE ALLEGATION

TO ENABLE THE RESPONDENTS TO KNOW THE GRAVAMEN OR THE ESSENCE OF THE OFFENCE CHARGED. ANY LACK OF PARTICULARITY GOES TO THE SUFFICIENCY OF THE PARTICULARS SUPPLIED. THE APPLICANT ALLEGES THE THREAT OF AN UNLAWFUL STRIKE AT VARIOUS TIMES DURING A PARTICULAR DAY AND A JOB PROJECT IN METROPOLITAN TORONTO "AND AT OTHER PLACES IN METROPOLITAN TORONTO INCLUDING OTHER JOB SITES AND OTHER PLACES". IN OUR VIEW THERE IS A SUFFICIENT AVERMENT ON THE FACE OF THE ALLEGATIONS TO ENABLE THE RESPONDENTS TO KNOW THE CASE THEY ARE TO MEET. IF IT SHOULD TURN OUT THAT THE RESPONDENTS ARE PREJUDICED AFTER EVIDENCE IS ADDUCED THEY MAY REQUEST AN ADJOURNMENT AT THAT TIME. SUBJECT TO THE CHANGES AND AMENDMENT IN THE PARTICULARS WHICH WERE AGREED TO BY THE APPLICANT AT THE HEARING THE REQUEST FOR PARTICULARS IS DENIED.

9. THE REGISTRAR IS DIRECTED TO LIST THIS MATTER FOR CONTINUATION OF HEARING.

339-71-U: MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES LOCAL 647 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (COMPLAINANT) v. SWISS CHALET B-Q A DIVISION OF HARVEY FOODS (RESPONDENT).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS D. B. ARCHER AND J. D. BELL.

DECISION OF THE BOARD: FEBRUARY 15, 1972.

1. PURSUANT TO THE DECISION OF THE BOARD DATED NOVEMBER 15, 1971, THIS MATTER WAS LISTED FOR CONTINUATION OF HEARING IN ORDER TO ENABLE THE RESPONDENT TO SHOW CAUSE WHY THE DECISION IF THE BOARD DATED AUGUST 13, 1971 SHOULD BE REVOKED AND A NEW HEARING HELD BY REASON OF FAILURE OF PROPER SERVICE OF NOTICE OF HEARING.

2. THE MATTER OF SERVICE OF DOCUMENTS IS DEALT WITH IN SECTION 50(2) OF THE RULES OF PROCEDURES, REGULATIONS AND PRACTICE NOTICES IN THE FOLLOWING TERMS:

50 (2) WHERE A DOCUMENT IS REQUIRED TO BE SERVED BY THESE RULES, THE SERVICE MAY BE MADE,

(A) IN PERSON; OR

(B) BY MAIL ADDRESSED TO THE RECIPIENT AT HIS ADDRESS FOR SERVICE OR HIS LAST-KNOWN OR USUAL ADDRESS OR AT HIS PRINCIPAL OFFICE OR HIS PLACE OF BUSINESS, REFERRED TO IN AN APPLICATION, COMPLAINT, INTERVENTION OR REPLY IN THE PROCEEDING.

3. SECTION 102(1) OF THE LABOUR RELATIONS ACT PROVIDES AS FOLLOWS:

"FOR THE PURPOSES OF THIS ACT AND OF ANY PROCEEDINGS TAKEN UNDER IT, ANY NOTICE OR COMMUNICATION SENT THROUGH HER MAJESTY'S MA MAILS SHALL BE PRESUMED, UNLESS THE CONTRARY IS PROVED, TO HAVE BEEN RECEIVED BY THE ADDRESSEE IN THE ORDINARY COURSE OF MAIL."

4. DURING THE COURSE OF THE HEARING HELD PURSUANT TO THE BOARD'S DECISION OF NOVEMBER 15, 1972, THE BOARD INQUIRED OF THE RESPONDENT AS TO WHETHER IT HAD IN ITS EMPLOY A PERSON WHOSE NAME CORRESPONDED TO THAT DRAWN TO THE ATTENTION OF THE PARTIES IN PARAGRAPH 4 OF THE BOARD'S DECISION OF NOVEMBER 15, 1971. ON RECEIVING AN AFFIRMATIVE REPLY, THE BOARD DECLARED A RECESS IN THE HEARING IN ORDER THAT THE RESPONDENT MIGHT BRING THIS EMPLOYEE, A MR. JOSEPH LEILICH, IN AS A WITNESS.

5. MR. LEILICH HAS BEEN PART OF THE MANAGEMENT OF THE RESPONDENT SINCE 1960. HE DESCRIBED HIMSELF AS INSPECTOR AND SUPERVISOR OF SWISS CHALET RESTAURANTS. HIS OFFICE IS AT 238 BLOOR STREET WEST, TORONTO. HE TESTIFIED THAT ON OCCASIONS HE WOULD SIGN POST OFFICE RECEIPTS ACKNOWLEDGING DELIVERY OF REGISTERED MAIL TO THE COMPANY. HE WAS UNABLE TO RECOLLECT HAVING SIGNED A RECEIPT FOR ANY CORRESPONDENCE ADDRESSED TO THE RESPONDENT FROM THE ONTARIO LABOUR RELATIONS BOARD. HE DID NOT, HOWEVER, ALWAYS EXAMINE THE MAIL FOR WHICH HE SIGNED. HE STATED THAT THERE WAS NO ONE ELSE EMPLOYED BY THE RESPONDENT WHOSE NAME RESEMBLED HIS. MR. LEILICH STATED THAT ALL MAIL DESTINED FOR THE RESPONDENT IS DELIVERED AT 238 BLOOR STREET WEST, EVEN IF ADDRESSED TO 234 BLOOR STREET WEST.

6. MR. SYRON, WHO WAS VICE-PRESIDENT OF THE RESPONDENT AT THE MATERIAL TIME AND IS NOW PRESIDENT, STATED THAT HE HAD NOT RECEIVED THE NOTICE OF HEARING ALTHOUGH HE HAD BEEN EXPECTING IT. HE WAS AWAY AT THE TIME THE NOTICE WAS MAILED BUT WAS IN CONSTANT TOUCH WITH HIS OFFICE. HE EXPLAINED THAT THE NORMAL OFFICE PROCEDURE IS THAT AN EMPLOYEE DESCRIBED AS THE MAIL GIRL BRINGS THE DAILY CORRESPONDENCE TO HIS SECRETARY. THE SECRETARY NORMALLY OPENS MAIL ADDRESSED TO SYRON. HE STATED "SHE WOULD NOT THROW ANYTHING OUT". NEITHER THE MAIL GIRL NOR THE SECRETARY TESTIFIED AT THE HEARING.

7. MR. SYRON SAID THAT THE FIRST TIME HE WAS AWARE THAT THERE HAD BEEN A HEARING WAS WHEN HE RECEIVED THE DECISION OF THE BOARD DATED AUGUST 13, 1971. IT WAS THE RECEIPT OF THIS DECISION WHICH GAVE RISE TO THE REQUEST FOR REVOCATION AND REVIEW. THIS DECISION WAS SENT BY ORDINARY POST AND WAS ADDRESSED IN PRECISELY THE SAME WAY AS WAS THE NOTICE OF HEARING, INCLUDING THE MIS-SPELLING OF MR.

SYRON'S NAME AS VICE-PRESIDENT.

8. ON THE BASIS OF ALL OF THE FOREGOING AND HAVING REGARD TO THE PROVISIONS OF SECTION 102(1) OF THE ACT AND SECTION 50(2) OF THE BOARD'S RULES OF PROCEDURE, WE FIND THAT THE NOTICE OF HEARING WAS PROPERLY SERVED UPON THE RESTAURANT. IN OUR OPINION, IT WOULD LEAD TO CHAOS IF THE BOARD WERE TO GO BEHIND THE FACT OF SERVICE IN ACCORDANCE WITH THE ACT AND THE RULES OF PROCEDURE SO AS TO PERMIT PARTIES TO SEEK RELIEF ON THE GROUNDS OF INTERNAL DIFFICULTIES ARISING SUBSEQUENT TO THE PROPER SERVICE.

9. THE RESPONDENT'S REQUEST FOR REVIEW AND REVOCATION OF THE DECISION OF THE BOARD DATED AUGUST 13, 1971 IS THEREFORE DENIED AND THAT DECISION IS HEREBY REAFFIRMED.

1187-71-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. BRACE-BRIDGE WATER, LIGHT AND POWER COMMISSION (RESPONDENT).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND E. BOYER.

APPEARANCES AT THE HEARING: W. A. ACTON FOR THE APPLICANT, J. C. MURRAY AND F. HENRY FOR THE RESPONDENT.

DECISION OF J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBER J. D. BELL: FEBRUARY 21, 1972.

1. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING 1(1)(n) OF THE LABOUR RELATIONS ACT.

2. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT, SAVE AND EXCEPT THE ASSISTANT SUPERINTENDENT, PERSONS ABOVE THE RANK OF ASSISTANT SUPERINTENDENT, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

3. HAVING REGARD TO THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER DATED JANUARY 7, 1972 AND THE WRITTEN AND ORAL REPRESENTATIONS MADE BY THE PARTIES AND HAVING REGARD ALSO TO THE PROVISIONS OF THE DISTRICT MUNICIPALITY OF MUSKOKA ACT, R.S.O. 1970 c. 131, AND IN PARTICULAR SECTION 152 OF THE SAID ACT, THE BOARD FINDS THAT THE PERSONS EMPLOYED IN THE "WATERWORKS" ARE NOT EMPLOYEES OF THE RESPONDENT BUT RATHER ARE EMPLOYEES OF THE TOWN OF BRACEBRIDGE AND ACCORDINGLY ARE NOT INCLUDED IN THE ABOVE DESCRIBED BARGAINING UNIT. MORE SPECIFICALLY, THE BOARD FINDS THAT L. FLYNN, R. GIBBS, D. CURRIE AND E. JOHN-

STON ARE NOT EMPLOYEES OF THE RESPONDENT AND THEREFORE ARE NOT INCLUDED IN THE BARGAINING UNIT.

. . .

5. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN SIXTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON NOVEMBER 9, 1971, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 92(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

6. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

DECISION OF BOARD MEMBER E. BOYER: FEBRUARY 21, 1972.

I DISSENT. HAVING REGARD TO THE EVIDENCE OF COMMON SUPERVISION OVER THE "ELECTRICAL" AND "WATERWORKS" EMPLOYEES, I FIND THAT THE "WATERWORKS" EMPLOYEES ARE EMPLOYEES OF THE RESPONDENT FOR THE PURPOSE OF COLLECTIVE BARGAINING AND THEREFORE ARE APPROPRIATE FOR INCLUSION IN THE SAME BARGAINING UNIT AS THE "ELECTRICAL" EMPLOYEES.

1500-71-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) v. SUNNYBROOK FOOD MARKET (KEELE) LIMITED (RESPONDENT) v. LOCAL 206 NATIONAL COUNCIL OF CANADIAN LABOUR (INTERVENER) v. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS D. B. ARCHER AND J. E. C. ROBINSON, Q.C.

APPEARANCES AT THE HEARING: PETER GILCHRIST AND HAROLD JURCHUK FOR THE APPLICANT; NORMAN L. MATHEWS, Q.C. AND MOTTLE GOODBAUM FOR THE RESPONDENT; LEON J. LABONTE FOR THE INTERVENER; DENNIS CHOVINARD FOR THE OBJECTORS.

DECISION OF THE BOARD: FEBRUARY 22, 1972.

1. THE NAME "SUNNYBROOK FOOD MARKET (KEELE) LTD." APPEARING IN THE STYLE OF CAUSE OF THIS APPLICATION AS THE NAME OF THE RESPONDENT IS AMENDED TO READ: "SUNNYBROOK FOOD MARKET (KEELE) LIMITED".

2. THIS IS AN APPLICATION FOR CERTIFICATION IN WHICH THE APPLICANT SEEKS TO REPRESENT THE BARGAINING UNIT OF EMPLOYEES OF THE RESPONDENT DESCRIBED IN THE FOLLOWING TERMS: "ALL EMPLOYEES OF THE RESPONDENT

AT GUELPH, SAVE AND EXCEPT STORE MANAGER AND PERSONS ABOVE THE RANK OF STORE MANAGER".

3. THE RESPONDENT PROPOSES THAT THE UNIT BE DESCRIBED IN THE FOLLOWING TERMS: "ALL EMPLOYEES OF THE RESPONDENT IN ITS STORES IN ONTARIO, SAVE AND EXCEPT DEPARTMENT MANAGERS, PORTERS, HEAD OFFICE AND WAREHOUSE STAFF, EMPLOYEES EMPLOYED FOR NOT MORE THAN 28 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE EASTER VACATION, THE CHRISTMAS VACATION OR THE PERIOD MAY 15TH TO SEPTEMBER 15TH, INCLUSIVE, AND PERSONS ABOVE THE RANK OF DEPARTMENT MANAGER". THIS DESCRIPTION IS FOUND IN A COLLECTIVE AGREEMENT, WITH AN INSIGNIFICANT DIFFERENCE, MADE BETWEEN THE INTERVENER HEREIN AND THE RESPONDENT, EFFECTIVE ON JANUARY 1, 1971 AND TO REMAIN IN EFFECT UNTIL DECEMBER 31, 1972 AND FROM YEAR TO YEAR THEREAFTER SUBJECT TO NOTICE.

4. THE COLLECTIVE AGREEMENT WAS RAISED AS A BAR TO THE APPLICATION. THE APPLICANT THEREUPON PROPOSED TO AMEND THE BARGAINING UNIT SO AS TO INCLUDE ONLY "EMPLOYEE EMPLOYED FOR NOT MORE THAN 28 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE EASTER VACATION, THE CHRISTMAS VACATION OR THE PERIOD MAY 15TH TO SEPTEMBER 15TH INCLUSIVE" AS SET OUT IN THE COLLECTIVE AGREEMENT.

5. THE RESPONDENT OBJECTED TO THE SUGGESTION THAT THE APPLICANT BE PERMITTED TO AMEND THE BARGAINING UNIT. THE PRINCIPLE POINT RELIED UPON BY THE RESPONDENT WAS THAT THE APPLICATION AND THE NOTICE THEREOF AS POSTED INDICATED AN APPLICATION COVERING AN ALL EMPLOYEE UNIT TO WHICH, IN ITS OPINION, THE COLLECTIVE AGREEMENT PROVIDED A BARRIER. TO PERMIT THE APPLICANT TO AMEND THE UNIT TO ONE COVERING ONLY THE EXCLUDED EMPLOYEES UNDER THE AGREEMENT WOULD SUBSTANTIALLY AFFECT THE RESPONDENT'S APPROACH TO THE APPLICATION.

6. WE ARE OF THE OPINION THAT THE RESPONDENT'S OBJECTION IS WELL FOUNDED. TO ALLOW THE APPLICANT TO AMEND THE BARGAINING UNIT AT THIS STAGE OF THE PROCEEDINGS WOULD, IN OUR OPINION, RENDER THE ORIGINAL APPLICATION MISLEADING TO THE OBVIOUS PREJUDICE OF THE RESPONDENT.

7. THE BOARD IS PREPARED TO PERMIT THE AMENDMENT OF THE PROPOSED BARGAINING UNIT SO THAT IT WILL BE DESCRIBED AS COMPRISING ALL EMPLOYEES OF THE RESPONDENT AT GUELPH, SAVE AND EXCEPT DEPARTMENT MANAGERS, HEAD OFFICE AND WAREHOUSE STAFF AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND LOCAL 206 NATIONAL COUNCIL OF CANADIAN LABOUR, EFFECTIVE THE 1ST DAY OF JANUARY, 1971.

8. THE BOARD DIRECTS THAT THE TERMINAL DATE HEREIN BE EXTENDED TO MARCH 1ST, 1972.

1539-71-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 796 (APPLICANT) v. CAMPEAU CORPORATION LIMITED (RESPONDENT) v. CANADIAN CONSTRUCTION, BUILDING MAINTENANCE AND GENERAL WORKERS' UNION, (N.C.C.L.) (INTERVENER).

BEFORE: O. B. SHIME, VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND F. W. MURRAY.

DECISION OF THE BOARD: FEBRUARY 22, 1972.

1. THE APPLICANT HAS REQUESTED THAT A PRE-HEARING REPRESENTATION VOTE BE TAKEN.

2. IT APPEARS TO THE BOARD ON AN EXAMINATION OF THE RECORDS OF THE APPLICANT AND THE RECORDS OF THE RESPONDENT THAT NOT LESS THAN THIRTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE VOTING CONSTITUENCY HEREINAFTER DESCRIBED WERE MEMBERS OF THE APPLICANT AT THE TIME THE APPLICATION WAS MADE.

3. HAVING REGARD TO THE AGREEMENT OF THE PARTIES, THE BOARD DIRECTS THAT A PRE-HEARING REPRESENTATION VOTE BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN THE FOLLOWING VOTING CONSTITUENCY:

ALL MANUFACTURING EMPLOYEES OF THE RESPONDENT EMPLOYED AT ITS PLANTS AT 2932 BASELINE ROAD, OTTAWA, SAVE AND EXCEPT THOSE CLASSIFIED AS WAREHOUSE EMPLOYEE, FACTORY CLERKS, REGULAR WATCHMAN, FOREMAN, STUDENTS HIRED FOR THE SUMMER VACATION PERIOD, OFFICE AND SALES STAFF AND EMPLOYEE SUB-CONTRACTORS.

4. ALL EMPLOYEES OF THE RESPONDENT IN THE VOTING CONSTITUENCY ON THE 10TH DAY OF FEBRUARY, 1972 WHO HAVE NOT VOLUNTARILY TERMINATED THEIR EMPLOYMENT OR WHO HAVE NOT BEEN DISCHARGED FOR CAUSE BETWEEN THE 10TH DAY OF FEBRUARY, 1972 AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

5. COUNSEL FOR THE RESPONDENT REQUESTED THE PROVISION ON THE BALLOT FOR NO TRADE UNION AND SUBMITTED THAT WHERE THERE ARE TWO TRADE UNIONS THE EMPLOYEES SHOULD HAVE A CHOICE OF VOTING FOR ONE OF THE TWO TRADE UNIONS OR A CHOICE FOR "NO TRADE UNION". THIS MATTER HAS PREVIOUSLY BEEN DISPOSED OF IN THE STEINBERG'S LIMITED CASE [1972] OLRB REP. (UNREPORTED) BOARD FILE NO. 598-71-R WHERE THE BOARD STATED AS FOLLOWS:

14. COUNSEL FOR THE RESPONDENT SUBMITS THAT IN THE EVENT THAT THE BOARD SHOULD DIRECT THE TAKING

OF A REPRESENTATION VOTE, THERE SHOULD BE A "NO UNION" OPTION ON THE BALLOT. THE APPLICANT IN THE INSTANT CASE IS SEEKING TO DISPLACE THE NEW LOCAL 486 AS THE BARGAINING AGENT FOR THE EMPLOYEES OF STEINBERG'S FOR WHICH LOCAL 486 NOW HOLDS THE BARGAINING RIGHTS. IF THE BOARD WERE TO ACCEDE TO THE REQUEST OF COUNSEL FOR THE RESPONDENT AND PLACE A "NO UNION" OPTION ON THE BALLOT, IT COULD HAVE THE EFFECT OF TURNING A DISPLACEMENT APPLICATION INTO AN APPLICATION FOR TERMINATION OF BARGAINING RIGHTS. HAVING REGARD TO THE FACT THAT THERE ARE OTHER PROVISIONS UNDER THE ACT FOR THE MAKING OF AN APPLICATION TERMINATING BARGAINING RIGHTS, THE BOARD IS OF THE OPINION THAT THIS IS NOT A CIRCUMSTANCE IN WHICH IT OUGHT TO EXERCISE ITS DISCRETION UNDER SECTION 92(6) OF THE ACT AND INCLUDE ON THE BALLOT A CHOICE INDICATING THAT THE EMPLOYEES DO NOT WISH TO BE REPRESENTED BY A TRADE UNION. THE REQUEST OF COUNSEL FOR THE RESPONDENT ACCORDINGLY IS DENIED.

FOR THE REASONS GIVEN IN THE STEINBERG'S LIMITED CASE, THE REQUEST OF THE RESPONDENT IS DENIED.

6. VOTERS WILL BE GIVEN A CHOICE BETWEEN THE APPLICANT AND THE INTERVENER.

7. THE MATTER IS REFERRED TO THE REGISTRAR.

1602-71-U: THE CANADIAN LITHOGRAPHERS ASSOCIATION INC., COUNCIL OF PRINTING INDUSTRIES OF CANADA AND SOUTHAM MURRAY, A DIVISION OF THE SOUTHAM PRINTING COMPANY LIMITED (APPLICANTS) V. ROBERT ALLEN, ET AL. (RESPONDENTS).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND F. W. MURRAY.

APPEARANCES AT THE HEARING: H. A. BERESFORD, K. R. KEEPING AND E. C. CALDWELL FOR THE APPLICANTS; D. MCCARTHY, A. WHEATCROFT AND R. E. TURNER FOR THE RESPONDENTS.

DECISION OF THE BOARD:

FEBRUARY 22, 1972.

1. THIS IS AN APPLICATION MADE UNDER SECTION 82 OF THE LABOUR RELATIONS ACT FOR A DECLARATION THAT THE PERSONS NAMED IN SCHEDULES A, B AND C ATTACHED TO THE APPLICATION CONTRAVENED THE PROVISIONS OF

SECTION 63 OF THE ACT AND BY SO DOING ARE ENGAGED IN AN UNLAWFUL STRIKE.

2. SINCE NOTICE OF THE APPLICATION WAS NOT SERVED ON THE RESPONDENT BRIAN NICHOLLS, THE APPLICATION AS IT RELATES TO HIM IS DISMISSED.

3. SOUTHAM MURRAY, A DIVISION OF THE SOUTHAM PRINTING COMPANY LIMITED (HEREINAFTER REFERRED TO AS SOUTHAM PRINTING) WAS BOUND BY A COLLECTIVE AGREEMENT BETWEEN THE CANADIAN LITHOGRAPHERS ASSOCIATION INC. AND THE COUNCIL OF PRINTING INDUSTRIES OF CANADA ON THE ONE HAND AND LOCAL 12-L AND OTHER LOCALS OF THE LITHOGRAPHERS AND PHOTOENGRAVERS INTERNATIONAL UNION ON THE OTHER HAND, EFFECTIVE FROM JANUARY 1, 1970 TO DECEMBER 31, 1971. ALL OF THE RESPONDENTS NAMED IN THE SCHEDULES ATTACHED TO THE INSTANT APPLICATION ARE IN THE BARGAINING UNIT COVERED BY THE SAID COLLECTIVE AGREEMENT AND LOCAL 12-L IS THE BARGAINING AGENT FOR THE RESPONDENT EMPLOYEES OF SOUTHAM PRINTING IN THE UNIT. FOLLOWING THE GIVING OF NOTICE TO BARGAIN ON OCTOBER 1, 1971, ROY TUENER, THE PRESIDENT OF LOCAL 12-L, MADE A REQUEST TO THE MINISTER DATED JANUARY 26, 1972 FOR THE APPOINTMENT OF A CONCILIATION OFFICER TO CONFER WITH THE PARTIES TO ENDEAVOUR TO EFFECT A RENEWAL OF THE SAID COLLECTIVE AGREEMENT. BY LETTER DATED FEBRUARY 3, 1972, THE PARTIES WERE ADVISED THAT THE MINISTER HAD APPOINTED A CONCILIATION OFFICER. NO MEETINGS HAVE BEEN HELD WITH THE CONCILIATION OFFICER AND NO REPORT HAS BEEN MADE BY HIM TO THE MINISTER.

4. THE RESPONDENTS NAMED IN THE SCHEDULES ATTACHED TO THE APPLICATION WERE SCHEDULED TO WORK ON THE MORNING, AFTERNOON OR EVENING SHIFT ON FEBRUARY 14, 1972, WITH THE EXCEPTION OF VIC SALIBIAN WHO WAS ON VACATION. THE BOARD FINDS THAT THE RESPONDENTS IN CONCERT OR IN ACCORDANCE WITH A COMMON UNDERSTANDING REFUSED TO WORK ON THAT DAY OR ON ANY DAY THEREAFTER. THE BOARD THEREFORE FINDS THAT THE RESPONDENTS NAMED IN THE SCHEDULES ATTACHED TO THE INSTANT APPLICATION (WITH THE EXCEPTION OF VIC SALIBIAN) ENGAGED IN AND ARE CONTINUING TO ENGAGE IN A STRIKE WITHIN THE MEANING OF SECTION 1(1)(M) OF THE LABOUR RELATIONS ACT.

5. HAVING REGARD TO THE EVIDENCE THAT THE CONCILIATION PROCEDURES HAVE NOT BEEN COMPLETED, THE BOARD FINDS THAT THE STRIKE ENGAGED IN BY THE EMPLOYEES OF SOUTHAM PRINTING WHO ARE NAMED AS RESPONDENTS IN THE SCHEDULES ATTACHED TO THIS APPLICATION, WHICH STRIKE COMMENCED ON FEBRUARY 14, 1972, CONTRAVENES THE PROVISIONS OF SECTION 63(2) OF THE ACT. THE BOARD ACCORDINGLY DECLARES THAT THE SAID STRIKE IS UNLAWFUL.

971-71-JD: MASON-KIEWIT (COMPLAINANT) V. INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 353, AND LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (RESPONDENTS).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND H. F. IRWIN.

APPEARANCES AT THE HEARING: B. W. BINNING, S. BERNARDO AND V. GRUE-NIG FOR THE COMPLAINANT; L. MORPHY, D. BUTT AND W. HARDY FOR I.B.E.W., LOCAL 353; E. ROVET, D. MCCARTHY, A. NEIL AND F. GODDARD FOR LABOURERS, LOCAL 506.

DECISION OF THE BOARD: FEBRUARY 23, 1972.

1. THE BOARD DIRECTS THAT LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 BE ADDED AS A RESPONDENT IN THIS MATTER.

2. THIS IS A COMPLAINT MADE UNDER SECTION 81 OF THE LABOUR RELATIONS ACT. THE COMPLAINANT IS REQUESTING THAT THE BOARD ISSUE A DIRECTION WITH RESPECT TO A WORK ASSIGNMENT WHICH THE COMPLAINANT HAS MADE THAT IS THE SUBJECT-MATTER OF A DISPUTE BETWEEN THE RESPONDENT TRADE UNIONS.

3. THE WORK IN DISPUTE IS THE CHIPPING OF CONCRETE SUB-FLOORING TO PREPARE FOR THE INSTALLATION OF ELECTRICAL DUCT WORK AND CONDUIT ON THE COMMERCE COURT PROJECT AT WELLINGTON STREET IN THE CITY OF TORONTO. THE PROJECT INVOLVES THE CONSTRUCTION OF A THREE-BUILDING COMPLEX COMPOSED OF A CENTRAL TOWER BUILDING AND TWO SMALLER BUILDINGS.

4. TWO DIFFERENT METHODS ARE BEING USED TO LAY CONCRETE FLOORING IN THE SAID BUILDINGS. IN THE CORE AREA OF EACH BUILDING, CONCRETE IS POURED ON STRUCTURAL STEEL FORMS TO MAKE A ROUGH SUB-FLOORING. ELECTRICAL DUCT WORK AND CONDUITS ARE THEN INSTALLED ON THE SUB-FLOORING. AFTER THE ELECTRICAL EQUIPMENT HAS BEEN INSTALLED A SECOND POUR OF CONCRETE IS MADE FOR THE FINISHED FLOOR SURFACE. IN THE TENANT AREA OF THE BUILDINGS A SINGLE POUR OF CONCRETE IS MADE ON STEEL RACKING TO FORM THE FLOORING. CONDUITS, DUCT WORK AND OTHER ELECTRICAL EQUIPMENT ARE INSTALLED ON THE RACKING PRIOR TO THE POUR. THERE HAVE BEEN OVERPOURS IN THE LAYING OF THE SUB-FLOORING. IN OTHER WORDS, THE LEVEL OF THE CONCRETE SUB-FLOORING HAS TURNED OUT TO BE HIGHER THAN THAT CALLED FOR IN THE SPECIFICATIONS. AS A RESULT A GENERAL CHIPPING HAS BEEN REQUIRED TO BRING THE SUB-FLOORING DOWN TO THE SPECIFIED LEVEL IN ORDER THAT THE ELECTRICAL DUCT WORK AND CONDUITS CAN BE PROPERLY INSTALLED. THAT IS TO SAY, THE SAID ELECTRICAL EQUIPMENT MUST BE INSTALLED AT A SPECIFIC DEPTH IN RELATION TO THE SURFACE OF THE FINISHED FLOORING. ACCORDING TO THE EVIDENCE THE WORK IN DISPUTE RELATES ONLY TO THE CHIPPING OF THE SUB-FLOORING IN THE CORE AREAS OF THE BUILDINGS.

5. THE EVIDENCE RELATING TO PAST PRACTICE IN THE CHIPPING OF CONCRETE FLOORING IN THE TORONTO AREA, AND IN PARTICULAR THE CHIPPING

OF CONCRETE SUB-FLOORING, IS MIXED. WE WOULD MENTION ALSO THAT THERE ARE CONFLICTS IN THE TESTIMONY OF A NUMBER OF WITNESSES WITH RESPECT TO INDIVIDUAL BUILDING PROJECTS. BE THAT AS IT MAY, THE EVIDENCE INDICATES THAT WHEN A GENERAL CHIPPING OF CONCRETE FLOORING HAS BEEN REQUIRED TO MEET SPECIFICATIONS, THE WORK HAS BEEN PERFORMED BY LABOURERS. ON THE OTHER HAND, THE EVIDENCE INDICATES THAT WHERE THE CHIPPING OF CONCRETE HAS BEEN NECESSARY FOR THE SOLE PURPOSE OF INSTALLING A SPECIFIC PIECE OF ELECTRICAL DUCT WORK OR CONDUIT, THE CHIPPING INVOLVED HAS BEEN DONE BY ELECTRICIANS AS PART OF THE INSTALLATION PROCESS.

6. SUCH SKILLS AS ARE NEEDED TO DO GENERAL CHIPPING OF CONCRETE FLOORING ARE PROSESSED BY BOTH LABOURERS AND ELECTRICIANS. THE LABOURERS, HOWEVER, HAVE HAD MORE EXPERIENCE THAN ELECTRICIANS IN DOING GENERAL CHIPPING WORK. ON THE OTHER HAND, WE FIND THAT ELECTRICIANS BY VIRTUE OF BOTH THEIR TRAINING AND EXPERIENCE ARE BETTER EQUIPPED THAN LABOURERS TO DO ANY SPECIFIC CHIPPING OF CONCRETE DIRECTLY RELATED TO THE LAYING OF THE DUCT WORK AND CONDUITS WHICH THEY INSTALL.

7. HAVING REGARD TO ALL OF THE EVIDENCE AND FACTORS WHICH THE BOARD TAKES INTO ACCOUNT IN DETERMINING WORK ASSIGNMENT DISPUTES, AND MORE SPECIFICALLY THE ABOVE CONSIDERATIONS WHICH WE FIND TO BE OF PARTICULAR IMPORTANCE IN THE INSTANT DISPUTE, THE BOARD DEEMS IT ADVISABLE IN THE CIRCUMSTANCES TO MAKE THE FOLLOWING DIRECTION:

THE COMPLAINANT, MASON-KIEWIT, SHALL ASSIGN THE WORK OF CHIPPING THE CONCRETE SUB-FLOORING ON THE COMMERCE COURT PROJECT IN THE CITY OF TORONTO, WHERE THE GENERAL CHIPPING OF THE SUB-FLOORING IS REQUIRED TO MEET THE LEVEL CALLED FOR IN THE SPECIFICATIONS, TO EMPLOYEES WHO ARE REPRESENTED BY THE LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506.

WHERE, HOWEVER, SUBSEQUENT TO ANY SUCH GENERAL CHIPPING OF THE CONCRETE SUB-FLOORING OR WHERE NO SUCH GENERAL CHIPPING HAS BEEN REQUIRED, ANY SPECIFIC CHIPPING OF THE CONCRETE FLOORING IS REQUIRED FOR AND IS DIRECTLY RELATED TO THE PROPER INSTALLATION OF ELECTRICAL DUCT WORK OR CONDUITS, THE SAID WORK SHALL BE ASSIGNED TO EMPLOYEES WHO ARE REPRESENTED BY THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 353.

1542-71-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL #247 (APPLICANT) v. DALTON ENGINEERING AND CONSTRUCTION COMPANY (RESPONDENT).

BEFORE: R.A. FURNESS, VICE CHAIRMAN AND BOARD MEMBERS E. BOYER AND J.D. BELL.

DECISION OF THE BOARD: FEBRUARY 23, 1972.

1. THIS APPLICATION FOR CERTIFICATION WAS FILED ON FEBRUARY 1, 1972.
2. THE APPLICANT FILED THREE APPLICATIONS FOR MEMBERSHIP ACCOMPANIED BY RECEIPTS. THE APPLICATIONS ARE SIGNED BY THE EMPLOYEES AND THE RECEIPTS ARE COUNTERSIGNED AND INDICATE THAT A PAYMENT OF AT LEAST \$1.00 HAS BEEN MADE WITHIN THE SIX MONTH PERIOD IMMEDIATELY PRECEDING THE TERMINAL DATE OF THE APPLICATION. THE MONEY WAS COLLECTED BY ONE PERSON. THE APPLICANT ALSO FILED A DULY COMPLETED FORM 54, DECLARATION CONCERNING MEMBERSHIP DOCUMENTS, CONSTRUCTION INDUSTRY.
3. THE RESPONDENT FAILED TO FILE A REPLY, A LIST OF EMPLOYEES AND SPECIMEN SIGNATURES WITHIN THE TIME FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.
- . . .
7. TWO OF THE APPLICATIONS FOR MEMBERSHIP FILED BY THE APPLICANT ARE DATED FEBRUARY 11, 1971 AND THE OTHER APPLICATION FOR MEMBERSHIP IS DATED FEBRUARY 27, 1970. HAVING REGARD TO THE FACT THAT ONE OF THE APPLICATIONS FOR MEMBERSHIP IS NOT DATED WITHIN THE ONE YEAR PERIOD IMMEDIATELY PRECEDING THE TERMINAL DATE OF THIS APPLICATION AND THAT THE OTHER TWO APPLICATIONS FOR MEMBERSHIP ARE DATED APPROXIMATELY ONE YEAR PRIOR TO THE TERMINAL DATE OF THIS APPLICATION, THE BOARD, IN ALL OF THE CIRCUMSTANCES OF THIS APPLICATION, SEEKS THE CONFIRMATORY EVIDENCE OF A REPRESENTATION VOTE.
8. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT NOT LESS THAN THIRTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON FEBRUARY 21, 1972, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 92(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.
9. A REPRESENTATION VOTE WILL BE TAKEN OF THE EMPLOYEES OF THE

RESPONDENT IN THE BARGAINING UNIT. ALL EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

10. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BE REPRESENTED BY THE APPLICANT IN THEIR EMPLOYMENT RELATIONS WITH THE RESPONDENT.

11. THE MATTER IS REFERRED TO THE REGISTRAR.

1557-71-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE NIPISSING BOARD OF EDUCATION (RESPONDENT).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS O. HODGES AND W. H. WIGHTMAN.

APPEARANCES AT THE HEARING: W. A. ACTON AND B. DRANE FOR THE APPLICANT; NO ONE APPEARING FOR THE RESPONDENT.

DECISION OF THE BOARD: FEBRUARY 25, 1972.

1. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(N) OF THE LABOUR RELATIONS ACT.

2. THE BOARD FURTHER FINDS THAT ALL AUDIO VISUAL TECHNICIAN EMPLOYEES OF THE RESPONDENT EMPLOYED IN ITS SCHOOLS IN THE GEOGRAPHICAL JURISDICTION OF THE RESPONDENT, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR AND PERSONS COVERED BY AN EXISTING COLLECTIVE AGREEMENT BETWEEN THE NIPISSING BOARD OF EDUCATION AND THE CANADIAN UNION OF PUBLIC EMPLOYEES LOCAL # 1165 C.L.C., CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

3. THE BOARD NOTES THE ADVICE OF THE APPLICANT THAT THE BARGAINING UNIT CONSTITUTES A TAG END UNIT.

4. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN SIXTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON FEBRUARY 16, 1972, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 92(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

5. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

1527-71-R: TOM RIGBY, GORDON CROCKFORD, INGRID MICHAELIS, BETTY McLAREN, ON BEHALF OF A GROUP OF EMPLOYEES OF WELWYN CANADA LIMITED (APPLICANTS) v. LOCAL UNION 120 OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS AFL-CIO-CLC (RESPONDENT) v. WELWYN CANADA LIMITED (INTERVENER).

BEFORE: O.B. SHIME, VICE-CHAIRMAN, AND BOARD MEMBERS O. HODGES AND J.E.C. ROBINSON, Q.C.

APPEARANCES AT THE HEARING: LARRY D. SMITH FOR THE APPLICANTS; J.A. SHIRKIE FOR THE RESPONDENT; W.G. PHELPS AND C. MORRIS FOR THE INTERVENER.

DECISION OF THE BOARD: FEBRUARY 29, 1972.

1. THE NAME "INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 120 (A.F.L., C.I.O.-C.L.C.)" APPEARING IN THE STYLE OF CAUSE OF THIS APPLICATION AS THE NAME OF THE RESPONDENT IS AMENDED TO READ: "LOCAL UNION 120 OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS AFL-CIO-CLC".

2. THIS IS AN APPLICATION FOR TERMINATION BY EMPLOYEES IN THE BARGAINING UNIT PURSUANT TO SECTION 49 OF THE LABOUR RELATIONS ACT. THE RESPONDENT CLAIMS THAT THE APPLICATION WAS UNTIMELY AS A RESULT OF SECTION 49(2)(c) OF THE ACT WHICH PROVIDES AS FOLLOWS:

49.-(2) ANY OF THE EMPLOYEES IN THE BARGAINING UNIT DEFINED IN A COLLECTIVE AGREEMENT MAY, SUBJECT TO SECTION 53, APPLY TO THE BOARD FOR A DECLARATION THAT THE TRADE UNION NO LONGER REPRESENTS THE EMPLOYEES IN THE BARGAINING UNIT,

(c) IN THE CASE OF A COLLECTIVE AGREEMENT REFERRED TO IN CLAUSE A OR B THAT PROVIDES THAT IT WILL CONTINUE TO OPERATE FOR ANY FURTHER TERM OR SUCCESSIVE TERMS IF EITHER PARTY FAILS TO GIVE TO THE OTHER NOTICE OF TERMINATION OR OF ITS DESIRE TO BARGAIN WITH A VIEW TO THE RENEWAL, WITH OR WITHOUT MODIFICATIONS, OF THE AGREEMENT OR TO THE MAKING OF A NEW AGREEMENT, ONLY DURING THE LAST TWO MONTHS OF EACH YEAR THAT IT SO CONTINUES TO OPERATE OR AFTER THE COMMENCEMENT OF THE LAST TWO MONTHS OF ITS OPERATION, AS THE CASE MAY BE.

IT APPEARS THAT THE RESPONDENT AND THE INTERVENER WERE PARTIES TO A COLLECTIVE AGREEMENT WHICH PROVIDED INTER ALIA:

23.01 THIS AGREEMENT SHALL REMAIN IN FORCE UNTIL AND INCLUDING SEPTEMBER 30, 1970 AND SHALL CONTINUE IN FORCE FROM YEAR TO YEAR THEREAFTER UNLESS IN ANY YEAR NOT MORE THAN SIXTY DAYS, AND NOT LESS THAN THIRTY DAYS, BEFORE THE DATE OF ITS TERMINATION, EITHER PARTY SHALL FURNISH THE OTHER WITH NOTICE OF TERMINATION OF, OR PROPOSED REVISION OF, THIS AGREEMENT.

3. ON AUGUST 26, 1970, THE RESPONDENT TRADE UNION GAVE NOTICE TO BARGAIN WITH THE VIEW TOWARDS "EFFECTING SOME CHANGES IN SAID AGREEMENT". IN OUR VIEW THIS NOTICE CONSTITUTED A NOTICE OF PROPOSED REVISION OF THE AGREEMENT UNDER ARTICLE 23.01. SINCE ARTICLE 23.01 PROVIDED THAT THE AGREEMENT "SHALL CONTINUE IN FORCE FROM YEAR TO YEAR" THEREAFTER UNLESS SUCH A NOTICE WAS GIVEN, AND ACCORDINGLY SINCE THAT NOTICE WAS GIVEN, THE AGREEMENT DID NOT CONTINUE IN FORCE SUBSEQUENT TO SEPTEMBER 30, 1970. ACCORDINGLY THE AGREEMENT DOES NOT CONSTITUTE A BAR TO THIS APPLICATION AND SINCE SECTION 49(2)(c) CONTEMPLATES AN OPEN SEASON IN THE CASE OF AN AGREEMENT WHICH CONTINUES TO OPERATE IT HAS NO APPLICATION TO THE PRESENT CASE. THE PRELIMINARY OBJECTION MADE BY THE RESPONDENT IS THEREFORE DENIED.

4. HAVING REGARD TO ALL THE EVIDENCE AND THE REPRESENTATIONS MADE TO THE BOARD, THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT NOT LESS THAN FIFTY PER CENT OF THE EMPLOYEES OF WELWYN CANADA LIMITED IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, HAD VOLUNTARILY SIGNIFIED IN WRITING THAT THEY NO LONGER WISH TO BE REPRESENTED BY THE RESPONDENT UNION ON FEBRUARY 9, 1972, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 92(2)(j) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING THE NUMBER OF PERSONS WHO HAVE VOLUNTARILY SIGNIFIED IN WRITING THAT THEY NO LONGER WISH TO BE REPRESENTED BY THE RESPONDENT UNION UNDER SECTION 49(3) OF THE SAID ACT.

5. THE BOARD DIRECTS THAT A REPRESENTATION VOTE BE TAKEN OF THE EMPLOYEES OF WELWYN CANADA LIMITED. THOSE ELIGIBLE TO VOTE ARE ALL EMPLOYEES OF WELWYN CANADA LIMITED AT ITS LONDON, ONTARIO PLANT, SAVE AND EXCEPT OFFICE STAFF, ENGINEERS, SUPERVISORS AND THOSE ABOVE THE RANK OF SUPERVISOR ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN.

6. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BE REPRESENTED BY THE RESPONDENT IN THEIR EMPLOYMENT RELATIONS WITH WELWYN CANADA LIMITED.

7. THE MATTER IS REFERRED TO THE REGISTRAR.

1497-71-R: INSURANCE EMPLOYEES UNION, LOCAL 1668, C.L.C. (APPLICANT)
V. ECONOMICAL MUTUAL INSURANCE COMPANY (RESPONDENT).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS D. B. ARCHER AND J. E. C. ROBINSON, Q.C.

APPEARANCES AT THE HEARING: HARRY SIMON, ART KUBE AND RALPH ORTLIEB FOR THE APPLICANT; H. A. BERESFORD AND P. H. SIMS FOR THE RESPONDENT.

DECISION OF VICE-CHAIRMAN RORY F. EGAN AND BOARD MEMBER D. B. ARCHER: FEBRUARY 29, 1972.

1. THE NAME "ECONOMICAL INSURANCE COMPANY" APPEARING IN THE STYLE OF CAUSE OF THIS APPLICATION AS THE NAME OF THE RESPONDENT IS AMENDED TO READ: "ECONOMICAL MUTUAL INSURANCE COMPANY".

2. THIS IS AN APPLICATION FOR CERTIFICATION IN WHICH THE APPLICANT WAS REQUIRED TO SATISFY THE BOARD THAT IT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(N) OF THE LABOUR RELATIONS ACT. THE APPLICATION IS DATED JANUARY 24, 1972.

3. THE EVIDENCE INDICATES THAT THE CANADIAN LABOUR CONGRESS ISSUED A CHARTER TO THE APPLICANT DATED JANUARY 4, 1972. THIS FOLLOWED A LETTER DATED DECEMBER 16, 1971 WHICH INDICATED THAT APPROVAL HAD BEEN GIVEN BY THE CONGRESS TO THE ISSUE OF A CERTIFICATE AND WHICH ASSIGNED THE CHARTER NUMBER TO THE APPLICANT. IN THE ABSENCE OF ANY EVIDENCE TO THE CONTRARY, THE MAXIM "OMNIA RITE ESSE ACTA PRAESUMUNTUR" INSOFAR AS THE CHARTER IS CONCERNED, APPLIES.

4. THE CONSTITUTION AND BY-LAWS OF A CHARTER LOCAL ARE PROVIDED FOR BY THE CANADIAN LABOUR CONGRESS, THE CHARTERING BODY. THESE WERE FILED WITH THE BOARD.

5. ON JANUARY 31, 1972 A MEETING OF THE MEMBERSHIP OF THE APPLICANT WAS HELD IN LONDON AND A PRESIDENT, VICE-PRESIDENT, RECORDING SECRETARY, SECRETARY-TREASURER, CONDUCTOR AND WARDEN WERE ELECTED BY THE MEMBERSHIP. THERE WAS ALSO ELECTED AT THIS MEETING A BARGAINING COMMITTEE. THE BY-LAWS CONTEMPLATE THE ELECTION OF THREE TRUSTEES AT THE FIRST MEETING OF THE LOCAL UNION, BUT THE MINUTES OF THE MEETING DO NOT INDICATE THAT TRUSTEES WERE IN FACT ELECTED.

6. ASSUMING, BUT WITHOUT SO FINDING, THAT IT IS PROPER FOR THE BOARD TO INQUIRE INTO THE PROCEEDINGS ADOPTED FOLLOWING THE GRANTING OF A CHARTER IN CIRCUMSTANCES SUCH AS THOSE EXISTING IN THE PRESENT CASE, THE BOARD FINDS THAT THERE HAS BEEN SUBSTANTIAL COMPLIANCE WITH THE REQUIREMENTS OF THE CONSTITUTION AND BY-LAWS GOVERNING A CHARTERED LOCAL OF THE CANADIAN LABOUR CONGRESS BY THE APPLICANT AND WE ARE SAT-

ISFIED ON THE EVIDENCE THAT LOCAL 1668 IS A VIABLE ENTITY AND THAT IT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(N) OF THE LABOUR RELATIONS ACT.

7. THE BOARD FURTHER FINDS THAT ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT AT LONDON, SAVE AND EXCEPT ASSISTANT MANAGER AND UNDERWRITER, PERSONS ABOVE THE RANK OF ASSISTANT MANAGER AND UNDERWRITER, CLAIMS ADJUSTER AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

8. AT THE HEARING THE UNION PROPOSED THE EXCLUSION OF CHIEF PROPERTY UNDERWRITER, CHIEF AUTO UNDERWRITER AND CHIEF ADJUSTER AND CLAIMS MANAGER, IN ADDITION TO THE ASSISTANT MANAGER AND PERSONS ABOVE THAT RANK. THE COMPANY TOOK THE POSITION THAT THESE TITLES WERE NOT USED BY IT AND PROPOSED THE EXCLUSIONS AS SET OUT IN THE BARGAINING UNIT. FOR THE PURPOSES OF CLARITY, THE BOARD POINTS OUT THAT BOTH PARTIES HAVE REFERENCE TO THE SAME PERSONS AND THAT G. KEELE, J. DAVIES, D. MCCABE AND A. CARROLL EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF THE LABOUR RELATIONS ACT AND ARE EXCLUDED FROM THE BARGAINING UNIT.

9. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN SIXTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON FEBRUARY 2, 1972, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 92(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

10. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

DECISION OF BOARD MEMBER J. E. C. ROBINSON, Q.C.: FEBRUARY 29, 1972.

IN MY RESPECTFUL OPINION, IT WOULD APPEAR THAT THE DECISION OF THE MAJORITY IS AT VARIANCE WITH EARLIER DECISIONS OF THIS BOARD, ALTHOUGH I CONCEDE THAT RECENT DECISIONS IN THE COURTS MIGHT SEEM TO DICTATE THAT THE BOARD SHOULD BE LESS STRICT IN THE MATTER OF THE GRANTING TO CERTAIN ORGANIZATIONS THE STATUS OF "TRADE UNION" WITHIN THE MEANING OF THE LABOUR RELATIONS ACT.

THE APPLICANT SAW FIT IN THE INSTANT CASE TO INTRODUCE WITH ITS MEMBERSHIP EVIDENCE INTER ALIA THE BY-LAWS GOVERNING CHARTERED LOCAL UNIONS OF THE CANADIAN LABOUR CONGRESS, THE CONSTITUTION OF THE CANADIAN LABOUR CONGRESS, A COPY OF THE CHARTER OF THE PURPORTED APPLICANT AND THE MINUTES OF THE FIRST MEETING OF SUCH LOCAL UNION DATED JANUARY 31, 1972.

AMONG THE PROVISIONS OF THE BY-LAWS GOVERNING CHARTERED LOCAL UNIONS ARE THE FOLLOWING PROVISIONS:-

VIII - OFFICERS OF A LOCAL UNION

1. EACH LOCAL UNION SHALL HAVE THE FOLLOWING OFFICERS: A PRESIDENT, A VICE-PRESIDENT, A SECRETARY-TREASURER, A RECORDING SECRETARY AND THREE EXECUTIVE BOARD MEMBERS.
2. A LOCAL UNION MAY ELECT MORE THAN ONE VICE-PRESIDENT IF IT SO DESIRES, AND IF THIS IS DONE, THE VICE-PRESIDENTS SHALL BE DESIGNATED AS FIRST VICE-PRESIDENT, SECOND VICE-PRESIDENT, ETC.

IX - THE EXECUTIVE BOARD

1. THE AFFAIRS OF THE LOCAL UNION, EXCEPT AS OTHERWISE PROVIDED, SHALL BE ADMINISTERED BY AN EXECUTIVE BOARD COMPOSED OF THE PRESIDENT, THE VICE-PRESIDENT OR VICE-PRESIDENTS AS THE CASE MAY BE, THE SECRETARY TREASURER, THE RECORDING SECRETARY AND THE THREE EXECUTIVE BOARD MEMBERS.
2. THE EXECUTIVE BOARD SHALL BE THE GOVERNING BODY OF THE LOCAL UNION BETWEEN REGULAR MEETINGS. IT SHALL TAKE SUCH ACTIONS AND RENDER SUCH DECISIONS AS MAY BE NECESSARY TO CARRY OUT FULLY THE DECISIONS AND INSTRUCTIONS OF REGULAR AND SPECIAL MEETINGS OF THE LOCAL UNION. IT SHALL ENFORCE THE BY-LAWS OF THE LOCAL UNION, THE CONSTITUTION AND POLICIES OF THE CANADIAN LABOUR CONGRESS AND THE PROVISIONS OF ANY AGREEMENTS THAT MAY BE IN FORCE AND EFFECT BETWEEN THE LOCAL UNION AND EMPLOYERS.
3. THE EXECUTIVE BOARD SHALL MEET BETWEEN REGULAR MEETINGS OF THE LOCAL UNION AND AT THE CALL OF THE PRESIDENT. THE PRESIDENT SHALL CALL A MEETING OF THE EXECUTIVE BOARD AT THE REQUEST IN WRITING OF ANY THREE OTHER OFFICERS. A MAJORITY OF THE MEMBERS OF THE EXECUTIVE BOARD SHALL CONSTITUTE A QUORUM FOR THE TRANSACTION OF BUSINESS.

X - SERGEANT-AT-ARMS AND TRUSTEES

1. THE LOCAL UNION SHALL ALSO ELECT A SERGEANT-AT-ARMS AND THREE TRUSTEES WHO SHALL NOT BE MEMBERS OF THE EXECUTIVE BOARD.

2. AT THE FIRST MEETING OF THE LOCAL UNION, THREE TRUSTEES SHALL BE ELECTED, ONE TO HOLD OFFICE FOR THREE YEARS, ONE FOR TWO YEARS AND ONE FOR ONE YEAR, AND EACH YEAR THEREAFTER ONE TRUSTEE SHALL BE ELECTED TO REPLACE A RETIRING TRUSTEE, FOR A TERM OF THREE YEARS."

THERE IS NO DOUBT THAT AT THE TIME OF THE APPLICATION FOR CERTIFICATION, VIZ. JANUARY 24, 1972, THE PURPORTED LOCAL UNION HAD NO OFFICERS, NOR WERE THERE ANY TRUSTEES ELECTED AT THE FIRST MEETING OF THE LOCAL UNION.

IN THE ISLAND PARK FOODMART LTD. (RE) GOLDSTEIN I.G.A. CASE, O.L.R.B. MONTHLY REPORT, NOVEMBER 1970, P. 838 AT P. 843, THE BOARD SAID:

"AGAIN, EVEN IF WE WERE TO FIND THAT THE LETTER OF SEPTEMBER 17, 1970, WHICH THE APPLICANT RELIES ON AS ITS CHARTER, SATISFIES THE MINIMUM REQUIREMENTS OF A UNION CHARTER (AND WE DO NOT SO FIND) THERE ARE OTHER SERIOUS IMPEDIMENTS TO RECOGNITION OF THE APPLICANT'S STATUS AS A TRADE UNION. WHILE THE CONSTITUTION AUTHORIZES THE NATIONAL PRESIDENT TO DO CERTAIN THINGS, THERE IS NOTHING IN THE CONSTITUTION WHICH WOULD AUTHORIZE THE NATIONAL PRESIDENT TO APPOINT OFFICERS FOR A NEWLY CHARTERED LOCAL. THE INSTANT APPLICATION WAS MADE PRIOR TO THE FIRST MEETING OF THE APPLICANT'S MEMBERS AND PRIOR TO THE ELECTION OF OFFICERS. IT THEREFORE FOLLOWS THAT EVEN IF WE WERE TO FIND THAT THE APPLICANT WAS A DULY CHARTERED LOCAL OF A UNION CAPABLE OF CHARTERING LOCAL UNIONS, THE EVIDENCE HAS FAILED TO ESTABLISH THAT THE APPLICANT WAS A VIABLE ENTITY AT THE TIME THIS APPLICATION WAS MADE."

THE BOARD WENT ON TO FIND THAT, BASED ON THE DEFECTS ENUMERATED, THE APPLICANT HAD FAILED TO ESTABLISH THAT IT WAS A TRADE UNION WITHIN THE MEANING OF THE LABOUR RELATIONS ACT.

IN MY OPINION, MANY OF THE SAME DEFECTS EXIST IN THE PRESENT CASE.

IN BLUE BELL CANADA LIMITED CASE, O.L.R.B. MONTHLY REPORT, FEBRUARY 1966, P. 809, AT P. 811, THE BOARD IN CONSIDERING WHETHER OR NOT THE LACK OF A MEETING OF THE MEMBERS OF THE LOCAL AND THE ABSENCE OF AN ELECTION OF OFFICERS, AT THE DATE OF THE MAKING OF APPLICATION, WOULD DEPRIVE THE LOCAL OF STATUS AS A "TRADE UNION" WITHIN THE MEANING OF THE LABOUR RELATIONS ACT, STATED:

"HAVING REGARD TO THE DECISION OF THE BOARD IN THE ABITIBI POWER & PAPER COMPANY LIMITED CASE, BOARD FILE NO. 10731-65-R, OCTOBER 14TH, 1965, THE BOARD FINDS THAT SINCE NO OFFICERS HAD BEEN ELECTED AND NO RESPONSIBLE OFFICIALS HAD BEEN APPOINTED BY THE MEMBERS OF LOCAL 467, LOCAL 467 IS NOT A VIABLE ENTITY WHICH CAN BE CONSIDERED BY THE BOARD TO BE A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT."

SEE ALSO J. HARRIS & SONS LTD. CASE, 60 CLLC 884; FERRITRONICS LIMITED CASE, O.L.R.B. MONTHLY REPORT, MARCH 1969, AT P. 1286; ALCAN DESIGN HOMES LIMITED CASE. O.L.R.B. MONTHLY REPORT, APRIL 1969, AT P. 55; BORG FABRICS LIMITED CASE, O.L.R.B. MONTHLY REPORT, DECEMBER 1966, P. 693; ABITIBI POWER AND PAPER COMPANY CASE, O.L.R.B. MONTHLY REPORT, OCTOBER 1965, P. 491.

IN THE COCHRANE-DUNLOP HARDWARE LTD. CASE, 63 CLLC 1134, AT P. 1135, THE BOARD MADE THE FOLLOWING OBSERVATION:-

"IT IS ALSO INTERESTING TO NOTE THAT THE BY-LAWS GOVERNING DIRECTLY CHARTERED LOCALS OF THE C.L.C. REQUIRE THAT, BEFORE APPLYING FOR A CHARTER, AT LEAST 10 PERSONS MUST MEET TOGETHER TO COMPLETE THE APPLICATION, DECIDE WHAT MINIMUM INITIATION FEES AND MONTHLY DUES SHALL BE CHARGED, ELECT OFFICERS AND TAKE SUCH OTHER ACTION AND MAKE SUCH OTHER DECISIONS AS ARE NECESSARY TO ESTABLISH THE LOCAL UNION - ALL WITHIN THE FRAMEWORK OF BY-LAWS ALREADY IN EXISTENCE."

WHILE THE BY-LAWS HAVE BEEN CHANGED SOMEWHAT FROM THE TIME OF THAT OBSERVATION, THERE HAS BEEN NO EVIDENCE ADDUCED THAT CERTAIN CONDITIONS PRESENTLY EXISTING IN THE BY-LAWS HAVE BEEN COMPLIED WITH. INDEED, THERE IS DIRECT EVIDENCE THAT CERTAIN OF THE CONDITIONS WERE NOT COMPLIED WITH.

ON THE BASIS OF THE EVIDENCE, INCLUDING THAT SET FORTH ABOVE, I MUST FIND THAT THE DECISION OF THE MAJORITY IS NOT IN ACCORD WITH THE DECIDED CASES OF THIS BOARD.

1223-71-R: CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) V. THE STANLEY STEEL COMPANY LIMITED (RESPONDENT) V. UNITED STEELWORKERS OF AMERICA (INTERVENER).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND O. HODGES.

APPEARANCES AT THE HEARING: G. MILLER, K. GILBERT AND L. McLACHLAN FOR THE APPLICANT; E. L. STRINGER, Q.C., AND J. MATHEWS FOR THE RESPONDENT; T. E. ARMSTRONG, W. LISSON AND H. HYND FOR THE INTERVENER.

DECISION OF THE BOARD: FEBRUARY 29, 1972.

1. THIS IS AN APPLICATION FOR CERTIFICATION WHEREIN THE APPLICANT REQUESTED THAT A PRE-HEARING REPRESENTATION VOTE BE TAKEN. THE BALLOT BOX CONTAINING ALL THE BALLOTS CAST IN THE PRE-HEARING VOTE WAS SEALED. A HEARING WAS CONDUCTED TO INQUIRE INTO AN ALLEGATION THAT ONE OF THE PERSONS CLAIMED BY THE APPLICANT AS A MEMBER HAD NOT PAID ANY MONEY ON HIS OWN BEHALF ON ACCOUNT OF INITIATION FEE.

2. THE EVIDENCE ESTABLISHED THAT THE APPLICANT SEEKS TO DISPLACE THE INTERVENER AS BARGAINING AGENT FOR THE UNIT OF EMPLOYEES WITH WHICH WE ARE HERE CONCERNED. JAMES WILLIAMSON, THE DEPOSED PRESIDENT OF THE LOCAL OF THE INTERVENER WHICH ADMINISTERED THE COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERVENER, AND A FEW OTHER FORMER OFFICIALS OF THAT LOCAL FORMED A COMMITTEE CALLED "THE STANLEY STEEL COMMITTEE FOR A CANADIAN UNION." MR. WILLIAMSON WAS THE LEADER OF THIS COMMITTEE AND HE ARRANGED A MEETING WITH MR. KEITH GILBERT, A REPRESENTATIVE OF THE APPLICANT, WITH THE VIEW OF HAVING THE APPLICANT DISPLACE THE INTERVENER AS BARGAINING AGENT. WHILE MR. GILBERT GAVE SPECIFIC INSTRUCTIONS AS TO WHY THE APPLICATION FOR MEMBERSHIP CARDS WERE TO BE SIGNED AND THE REQUIREMENT THAT EACH MEMBER PAY \$1.00 INITIATION FEE, MR. GILBERT DID NOT ACTIVELY ORGANIZE THE RESPONDENT'S EMPLOYEES. THE ORGANIZING CAMPAIGN WAS HEADED BY MR. WILLIAMSON WITH THE ASSISTANCE OF FOUR OR FIVE OTHER COLLECTORS WHO WERE CHOSEN BY MR. WILLIAMSON. THE CAMPAIGN TO SIGN MEMBERS WAS CONDUCTED SOLELY BY THE EMPLOYEES OF THE RESPONDENT AND MOST OF THE CARDS WERE SIGNED ON THE RESPONDENT'S PREMISES.

3. ON NOVEMBER 3, 1970, MR. WILLIAMSON GAVE SEVERAL CARDS TO AN EMPLOYEE, JAMES BOWMAN, AND ASKED HIM TO TRY TO SIGN UP SOME EMPLOYEES WHOM MR. WILLIAMSON HAD NOT YET APPROACHED. MR. BOWMAN WAS NOT ONE OF THE COLLECTORS CHOSEN BY MR. WILLIAMSON. MR. BOWMAN RETURNED THREE CARDS TO MR. WILLIAMSON ABOUT ONE HOUR LATER TOGETHER WITH \$1.00 FOR EACH CARD. NO INQUIRIES WERE MADE OF MR. BOWMAN CONCERNING THE MANNER IN WHICH THE CARDS WERE SIGNED OR THE MONEY COLLECTED. MR. BOWMAN HAD NOT SIGNED THE RECEIPT PORTION OF THE CARD AS COLLECTOR AND MR. WILLIAMSON COMPLETED THE CARDS BY FILLING IN CERTAIN INFORMATION SUCH AS THE

CLASSIFICATION OF THE MEMBER AND MR. WILLIAMSON THEN SIGNED EACH OF THE THREE CARDS AS "COLLECTOR". MR. WILLIAMSON WAS NOT PRESENT WHEN THE CARDS WERE SIGNED AND HAD NOT RECEIVED ANY MONEY FROM THE PERSONS WHO SIGNED THE CARDS. HE ALSO DID NOT MAKE ANY INQUIRIES OF THE THREE PERSONS WHO HAD SIGNED THE CARDS AS MEMBERS.

4. MR. BOWMAN TESTIFIED THAT TWO OF THE PERSONS WHO SIGNED A CARD HAD ALSO PAID HIM \$1.00 EACH ON THEIR OWN BEHALF. HOWEVER, MR. STONE, THE THIRD EMPLOYEE WHO SIGNED A CARD, DID NOT HAVE \$1.00 AND MR. BOWMAN VOLUNTEERED TO LOAN HIM \$1.00 AND ACCORDINGLY TOOK MR. STONE'S SIGNED CARD AND GAVE IT WITH THE OTHER TWO CARDS TO MR. WILLIAMSON TOGETHER WITH THE \$2.00 COLLECTED FROM TWO OF THE EMPLOYEES AND \$1.00 OF HIS OWN MONEY WHICH HE HAD AGREED TO LOAN MR. STONE AS THE INITIATION FEE. MR. BOWMAN DID NOT ADVISE MR. WILLIAMSON OF THE LOAN. MR. STONE DID NOT REPAY THE LOAN TO MR. BOWMAN UNTIL AFTER THE VOTE WAS TAKEN. APPARENTLY HE HAD WORKED ON A DIFFERENT SHIFT THAN MR. BOWMAN AND MR. BOWMAN HAD NOT SOUGHT HIM OUT FOR REPAYMENT.

5. MR. WILLIAMSON DELIVERED ALL THE CARDS WHICH HE HAD SIGNED AS "COLLECTOR" TO MR. GILBERT. HE ALSO DELIVERED THE CARDS OF TWO OTHER COLLECTORS TO MR. GILBERT. MR. WILLIAMSON TESTIFIED THAT HE MADE NO EXPLANATION TO MR. GILBERT OF HIS DEALINGS WITH MR. BOWMAN. HE STATED THE SUBJECT "DIDN'T COME UP." HE FURTHER STATED THAT IF MR. GILBERT HAD ASKED WHETHER HE HAD PERSONALLY COLLECTED THE MONEY FROM EACH PERSON WHO HAD SIGNED A CARD HE WOULD NOT HAVE LIED BUT WOULD HAVE EXPLAINED ABOUT HIS DEALINGS WITH MR. BOWMAN.

6. MR. GILBERT TESTIFIED THAT HE HAD GIVEN DETAILED INSTRUCTIONS TO THE COLLECTORS ABOUT COLLECTING \$1.00 FROM EACH MEMBER. HE FURTHER TESTIFIED THAT HE ASKED MR. WILLIAMSON AND THE OTHER COLLECTORS WHO DELIVERED THEIR CARDS TO HIM WHETHER \$1.00 WAS COLLECTED IN SUPPORT OF EACH CARD AND HE RECEIVED ASSURANCES THAT \$1.00 HAD BEEN COLLECTED FOR EACH CARD. HE ACKNOWLEDGED, HOWEVER, THAT HE DID NOT ASK IF THE PERSONS WHOSE NAMES APPEARED ON THE CARDS AS "COLLECTOR" HAD ACTUALLY COLLECTED THE \$1.00 FROM EACH MEMBER. ALTHOUGH TWO OF THE COLLECTORS HAD SENT THEIR CARDS WITH MR. WILLIAMSON, MR. GILBERT MADE NO INQUIRIES OF WILLIAMSON CONCERNING THE OTHER TWO COLLECTORS. HE FURTHER TESTIFIED THAT MR. WILLIAMSON DID NOT ADVISE HIM ABOUT THE BOWMAN TRANSACTION. MR. GILBERT MADE A VISUAL CHECK OF ALL THE CARDS TO SEE IF THEY WERE PROPERLY FILLED OUT AND TO ASCERTAIN WHETHER \$1.00 WAS ATTACHED TO EACH CARD.

7. MR. GILBERT SIGNED THE DECLARATION CONCERNING MEMBERSHIP DOCUMENTS (FORM 8) IN SUPPORT OF THE 121 MEMBERSHIP CARDS THAT WERE FILED BY THE APPLICANT. ITEM 3 OF FORM 8 READS AS FOLLOWS:

(WHERE THE DOCUMENTARY EVIDENCE CONSISTS
IN PART OF RECEIPTS OR OTHER ACKNOWLEDGMENTS

OF THE PAYMENT ON ACCOUNT OF DUES OR INITIATION FEES). ON THE BASIS OF MY PERSONAL KNOWLEDGE AND INQUIRIES THAT I HAVE MADE, I STATE THAT THE PERSONS WHOSE NAMES APPEAR ON THE RECEIPTS OR OTHER ACKNOWLEDGMENTS OF THE PAYMENT ON ACCOUNT OF DUES OR INITIATION FEES ARE THE PERSONS WHO ACTUALLY COLLECTED THE MONEYS PAID ON ACCOUNT OF DUES OR INITIATION FEES AND THAT EACH MEMBER, ON WHOSE BEHALF A RECEIPT OR AN ACKNOWLEDGMENT OF PAYMENT IS SUBMITTED HAS PERSONALLY PAID IN MONEY THE AMOUNT SHOWN THEREON ON HIS OWN BEHALF TO THE PERSON WHOSE NAME APPEARS ON HIS RECEIPT OR ACKNOWLEDGMENT OF PAYMENT AS COLLECTOR, EXCEPT IN THE FOLLOWING INSTANCES:

8. MR. GILBERT DID NOT MAKE ANY EXCEPTIONS CONCERNING THE INFORMATION CONTAINED IN ITEM 3 SET OUT ABOVE.

9. THE EVIDENCE OF THIS CASE CLEARLY ESTABLISHES THAT THE INFORMATION CONTAINED ON AT LEAST THREE OF THE MEMBERSHIP CARDS WHICH MR. WILLIAMSON SIGNED AS COLLECTOR WAS INACCURATE DUE TO THE FACT THAT MR. WILLIAMSON WAS NOT THE PERSON WHO HAD ACTED AS COLLECTOR WITH RESPECT TO ANY MONEY PAID IN SUPPORT OF THOSE THREE CARDS. THE EVIDENCE ALSO CLEARLY ESTABLISHED THAT MR. GILBERT FAILED TO INQUIRE WHETHER THE PERSONS WHOSE NAMES APPEARED ON THE MEMBERSHIP CARDS AS COLLECTOR HAD ACTUALLY RECEIVED THE \$1.00 WHICH THE CARDS ON THEIR FACE INDICATE WAS PAID OR THAT THE PERSONS WHOM THE CARDS INDICATE PAID THE MONEY HAD ACTUALLY PAID THAT AMOUNT TO THE PERSON NAMED ON THE CARDS AS "COLLECTOR" ON THEIR OWN BEHALF.

10. IN THE NATIONAL STEEL CAR CORPORATION LIMITED CASE, OLRB MONTHLY REPORT, JANUARY 1966, P. 738, THE BOARD DEALT WITH A SITUATION NOT DISSIMILAR FROM THE SITUATION WITH WHICH WE ARE HERE FACED. IN THAT CASE THE BOARD STATED AS FOLLOWS:

13. IT IS READILY APPARENT THAT A PERSON COMPLETING FORM 9 (NOW FORM 8) MUST BE SEIZED WITH SOME TYPE OF KNOWLEDGE IN ORDER TO SATISFY THE REQUIREMENTS OF ITEM 3 CITED ABOVE. THIS KNOWLEDGE MAY BE PERSONAL KNOWLEDGE (I.E.) KNOWLEDGE GAINED BY EITHER ACTING AS THE ACTUAL COLLECTOR OR KNOWLEDGE GAINED BY BEING PERSONALLY PRESENT AND ACTUALLY WITNESSING THE TRANSACTION BETWEEN THE COLLECTOR AND THE MEMBER WHEREIN THE MEMBERSHIP CARD WAS SIGNED AND PAYMENT OF MONEY MADE BY THE MEMBER TO THE COLLECTOR.

14. THE OTHER TYPE OF KNOWLEDGE WHICH IS ACCEPTABLE IS THAT KNOWLEDGE GAINED FROM INQUIRIES MADE OF THE PERSONS WHO ACTUALLY ACTED AS COLLECTORS, OR THE PERSONS WHO MADE THE NECESSARY INQUIRIES OF THE ACTUAL COLLECTORS.

15. THE REQUIREMENT THAT INQUIRIES BE MADE IS OBVIOUSLY NOT AN ONEROUS ONE OR ONE THAT IMPOSES AN UNDUE BURDEN ON THE APPLICANT; HOWEVER, THE REQUIREMENT IS THAT INQUIRIES BE MADE.

16. IN ORDER THAT INQUIRIES BE MEANINGFUL IT IS OBVIOUS THAT THEY MUST BE MADE AFTER THE EVENT. INSTRUCTION GIVEN TO COLLECTORS PRIOR TO THE SIGNING OF MEMBERS MAY BE HELPFUL OR NECESSARY IN THE CARRYING OUT OF AN ORGANIZING CAMPAIGN, HOWEVER, SUCH INSTRUCTIONS DO NOT OBTAIN THE NECESSITY OF MAKING THE INQUIRIES REQUIRED FOR THE PROPER COMPLETION OF FORM 9 (NOW FORM 8). (SEE DOMINION STORES LIMITED CASE, O.L.R.B. MONTHLY REPORT, DECEMBER 1964, P. 447).

17. IN THE INSTANT CASE, MR. STOREY, PRIOR TO COMPLETING FORM 9 (NOW FORM 8) MADE INQUIRIES OF MR. COOKE. HOWEVER, MR. COOKE HAD MADE NO INQUIRIES OF MR. GRIFFIN AND IN TURN MR. GRIFFIN HAD MADE NO INQUIRIES OF OTHER PERSONS WHO HAD ACTED AS COLLECTORS. IT IS READILY APPARENT THAT THE INQUIRIES MADE BY MR. STOREY WERE MADE OF A PERSON WHO HAD NO DIRECT KNOWLEDGE OF THE COLLECTORS AND THE FAILURE OF MR. COOKE AND MR. GRIFFIN TO MAKE INQUIRIES FRUSTRATED THE PURPOSE OF MR. STOREY'S INQUIRIES. WHERE THE OFFICERS OF AN APPLICANT TRADE UNION HAVE THEMSELVES FRUSTRATED THE INQUIRIES MADE BY THE PERSON WHO COMPLETES FORM 9 (NOW FORM 8) AND BY THEIR FAILURE TO FOLLOW THROUGH WITH THEIR OWN INQUIRIES, RENDER THE INQUIRIES MADE BY SUCH PERSON MEANINGLESS, WE MUST FIND THAT FORM 9 (NOW FORM 8) IN SUCH CIRCUMSTANCES CANNOT SERVE THE PURPOSE FOR WHICH IT WAS INTENDED AND IN SUCH CIRCUMSTANCES IS A NULLITY. IN ARRIVING AT THIS CONCLUSION, THE BOARD HAS NOTED WITH APPROVAL THE VALLEY TRANSPORTATION COMPANY LIMITED CASE, O.L.R.B. MONTHLY REPORT, JUNE, 1964, P. 140, WHEREIN THE BOARD SAID:

THE BOARD MUST EXPECT AND INSIST THAT PERSONS WHO FILE APPLICATIONS FOR

MEMBERSHIP CARDS AND RECEIPTS AND FORM 9 (NOW FORM 8) AS EVIDENCE OF MEMBERSHIP, TAKE ALL NECESSARY PRECAUTIONS AND CARE TO ENSURE THAT THE INFORMATION CONTAINED THEREIN IS TRUE AND ACCURATE. THE BOARD IS ENTITLED TO DEMAND THE HIGHEST STANDARDS OF INTEGRITY, DISCLOSURE, AND ACCURACY ON THE PART OF THOSE WHO SUBMIT SUCH EVIDENCE AND WHERE UNDISCLOSED INACCURACIES OF MATERIAL FACTS ARE LATER BROUGHT TO ITS ATTENTION, TO TAKE A STRICT VIEW OF THEM.

11. WHILE MR. GILBERT MADE GENERAL INQUIRIES CONCERNING THE PAYMENT OF \$1.00, WE FIND THAT MR. GILBERT FAILED TO MAKE THE TYPE OF INQUIRY REQUIRED BY ITEM 3 OF FORM 8. THE STATEMENT CONTAINED IN ITEM 3 REQUIRES THE PERSON WHO COMPLETES THE DECLARATION TO INQUIRE WHETHER THE PERSONS WHOSE NAMES APPEAR ON THE RECEIPTS ARE THE PERSONS WHO ACTUALLY COLLECTED THE MONEY PAID AND THAT THE PERSON ON WHOSE BEHALF THE ACKNOWLEDGMENT OF PAYMENT IS SUBMITTED "HAS PERSONALLY PAID IN THE AMOUNT SHOWN THEREON ON HIS OWN BEHALF TO THE PERSON WHOSE NAME APPEARS ON THE RECEIPT OR ACKNOWLEDGMENT OF PAYMENT AS COLLECTOR". HAD MR. GILBERT MADE THESE INQUIRIES, MR. WILLIAMSON WOULD HAVE HAD THE OPPORTUNITY TO EXPLAIN THE BOWMAN TRANSACTION. THE OBVIOUS PURPOSE OF THIS DECLARATION IS TO BRING TO LIGHT THE TYPE OF SITUATION WITH WHICH WE ARE HERE CONCERNED. IN FAILING TO MAKE THESE INQUIRIES MR. GILBERT FRUSTRATED THE WHOLE PURPOSE OF FORM 8.

12. SINCE THE DOCUMENTS TENDERED AS EVIDENCE OF MEMBERSHIP BY THE APPLICANT ARE NOT SUPPOSED BY A RELIABLE DECLARATION CONCERNING MEMBERSHIP DOCUMENTS (FORM 8) BECAUSE OF THE FAILURE OF MR. GILBERT TO MAKE THE NECESSARY AND PROPER INQUIRIES AND SINCE THE ABSENCE OF A RELIABLE DECLARATION CONCERNING MEMBERSHIP DOCUMENTS GOES TO THE VERY ROOT OF THE MEMBERSHIP EVIDENCE SUBMITTED BY THE APPLICANT, THE BOARD IS CONSTRAINED TO FIND THAT THE MEMBERSHIP DOCUMENTS CANNOT BE ACCEPTED AS CONTAINING RELIABLE INFORMATION WHICH WOULD MEET EVEN THE MINIMUM STANDARDS OF PROOF REQUIRED BY THE BOARD (SEE ESSEX WIRE CORPORATION LIMITED CASE, OLRB MONTHLY REPORT, OCTOBER 1965, P. 490).

13. WHILE THIS DECISION ADVERSELY REFLECTS ON THE TYPES OF INQUIRIES MADE BY MR. GILBERT, IT IS NOT INTENDED TO SUGGEST THAT MR. GILBERT INTENTIONALLY ATTEMPTED TO MISLEAD THE BOARD. WE BELIEVE THAT MR. GILBERT MERELY MISCONSTRUED THE NATURE OF THE INQUIRY REQUIRED OF HIM.

14. IN VIEW OF THE RESULT, IT WILL NOT BE NECESSARY FOR THE BOARD TO DETERMINE THE OTHER ISSUES IN THIS MATTER.

15. THIS APPLICATION IS THEREFORE DISMISSED.

16. THE BOARD WILL NOT ENTERTAIN AN APPLICATION FOR CERTIFICATION BY THE APPLICANT WITH RESPECT TO ANY OF THE EMPLOYEES OF THE RESPONDENT IN THE VOTING CONSTITUENCY WITHIN THE PERIOD OF SIX MONTHS FROM THE DATE HEREOF.

17. THE REGISTRAR WILL DESTROY THE BALLOTS CAST IN THE PRE-HEARING REPRESENTATION VOTE TAKEN IN THIS MATTER FOLLOWING THE EXPIRATION OF 30 DAYS FROM THE DATE OF THIS DECISION UNLESS A STATEMENT REQUESTING THAT THE BALLOTS SHOULD NOT BE DESTROYED IS RECEIVED BY THE BOARD FROM ONE OF THE PARTIES BEFORE THE EXPIRATION OF SUCH 30 DAY PERIOD.

CASE LISTINGS FEBRUARY 1972

	PAGE
1. CERTIFICATION	
(A) BARGAINING AGENTS CERTIFIED	27
(B) APPLICATIONS DISMISSED	41
(C) APPLICATIONS WITHDRAWN	45
2. APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS	47
3. APPLICATIONS FOR DECLARATION THAT STRIKE UNLAWFUL	47
4. APPLICATIONS FOR CONSENT TO PROSECUTE	48
5. COMPLAINTS UNDER SECTION 79 (FORMERLY S. 65) (UNFAIR LABOUR PRACTICE)	48
6. APPLICATIONS UNDER SECTION 39 (FORMERLY S. 35(A))	49
7. APPLICATION FOR CONSENT TO EARLY TERMINATION OF COLLECTIVE AGREEMENT	50
8. APPLICATIONS UNDER SECTION 55 (FORMERLY S. 47A)	51
9. JURISDICTIONAL DISPUTES	52
10. APPLICATIONS FOR DETERMINATION UNDER SECTION 95(2) (FORMERLY S. 79(2))	52
11. REFERENCE TO BOARD PURSUANT TO SECTION 96 (FORMERLY S. 79A)	53
12. APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION	53

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD
DURING FEBRUARY 1972

BARGAINING AGENTS CERTIFIED DURING FEBRUARY

NO VOTE CONDUCTED

1187-71-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. BRACE-BRIDGE WATER, LIGHT AND POWER COMMISSION (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT, SAVE AND EXCEPT THE ASSISTANT SUPERINTENDENT, PERSONS ABOVE THE RANK OF ASSISTANT SUPERINTENDENT, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (8 EMPLOYEES IN THE UNIT).

(SEE DECISION [1972] OLRB REP. 164).

1279-71-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT) V. PRESIDENT MOTOR HOTEL (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT SUDBURY REGULARLY EMPLOYED IN ITS BEVERAGE ROOMS AND COCKTAIL LOUNGES FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK, SAVE AND EXCEPT BEVERAGE ROOM AND LOUNGE MANAGERS AND PERSONS COVERED BY THE SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT." (6 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

1288-71-R: NURSES' ASSOCIATION THE SAULT STE. MARIE AND DISTRICT GROUP HEALTH ASSOCIATION (APPLICANT) V. THE SAULT STE. MARIE AND DISTRICT GROUP HEALTH ASSOCIATION (RESPONDENT).

UNIT: "ALL GRADUATE AND REGISTERED NURSES IN THE EMPLOY OF THE RESPONDENT IN THE CITY OF SAULT STE. MARIE, SAVE AND EXCEPT HEAD NURSES AND PERSONS ABOVE THE RANK OF HEAD NURSE." (15 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE EVIDENCE BEFORE IT AND TO THE REPRESENTATIONS OF THE PARTIES).

1430-71-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. PETERBOROUGH-VICTORIA-NORTHUMBERLAND AND DURHAM COUNTY ROMAN CATHOLIC SEPARATE SCHOOL BOARD (RESPONDENT).

UNIT: "ALL OFFICE, CLERICAL AND TECHNICAL EMPLOYEES OF THE RESPONDENT IN THE COUNTIES OF PETERBOROUGH, VICTORIA, NORTHUMBERLAND AND DURHAM,

SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, ONE SECRETARY TO THE BUSINESS ADMINISTRATOR, PERSONS ENGAGED IN CARE-TAKING AND MAINTENANCE, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (25 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

1442-71-R: HOTELS, CLUBS, RESTAURANTS, TAVERNS EMPLOYEES UNION, LOCAL 261 (APPLICANT) V. ALBION MOTOR HOTEL OF OTTAWA LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT OTTAWA, SAVE AND EXCEPT MANAGER, PERSONS ABOVE THE RANK OF MANAGER, OFFICE STAFF AND FRONT DESK CLERKS, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (30 EMPLOYEES IN THE UNIT).

1460-71-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. MAPLE ENGINEERING AND CONSTRUCTION COMPANY LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF NIAGARA AND THE COUNTY OF HALDIMAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

1462-71-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. WEDGE PUBLISHING FOUNDATION (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT MANAGER AND PERSONS ABOVE THE RANK OF MANAGER." (3 EMPLOYEES IN THE UNIT).

1463-71-R: CANADIAN FOOD AND ALLIED WORKERS LOCAL UNION 175, CHARTERED BY THE AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (APPLICANT) V. E.S.F. LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS VOYAGEUR RESTAURANT IN THE TOWNSHIP OF WEST OXFORD, SAVE AND EXCEPT SUPERVISORS, SUPERVISOR-HOSTESS, AND PERSONS ABOVE THOSE RANKS, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (23 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

1464-71-R: CANADIAN FOOD AND ALLIED WORKERS LOCAL UNION 175, CHARTERED BY THE AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (APPLICANT) V. E.S.F. LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS VOYAGEUR RESTAURANT IN THE TOWNSHIP OF WEST OXFORD REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, SAVE AND EXCEPT SUPERVISORS, SUPERVISOR-HOSTESSES, PERSONS ABOVE THE RANK OF SUPERVISOR OF SUPERVISOR-HOSTESS AND OFFICE STAFF." (34 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

1465-71-R: HOTEL & RESTAURANT EMPLOYEE'S & BARTENDERS' INTERNATIONAL UNION, LOCAL 280, A.F.L. - C.I.O. - C.L.C. (APPLICANT) V. EISENMAN HOTELS LIMITED KNOWN AS LANSDOWNE TAVERN (RESPONDENT).

UNIT: "ALL TAPMEN, BARTENDERS, BEVERAGE WAITERS, BAR-BOYS AND IMPROVERS IN THE EMPLOY OF THE RESPONDENT AT TORONTO, SAVE AND EXCEPT ASSISTANT MANAGER AND PERSONS ABOVE THE RANK OF ASSISTANT MANAGER, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (12 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES). (FOR THE PURPOSE OF CLARITY, THE BOARD POINTED OUT THAT THE CLASSIFICATIONS SET OUT IN THE BARGAINING UNIT INCLUDE FEMALE AS WELL AS MALE EMPLOYEES).

1472-71-R: CANADIAN FOOD AND ALLIED WORKERS LOCAL UNION 175, CHARTERED BY THE AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (APPLICANT) V. INTERCITY FOOD SERVICES INC. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS RESTAURANTS IN METROPOLITAN TORONTO, REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (39 EMPLOYEES IN THE UNIT).

1473-71-R: INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK AND DISTILLERY WORKERS OF AMERICA, AFL-CIO-CLC (APPLICANT) V. FORMOSA SPRING BREWERY - A DIVISION OF BENSON & HEDGES (CANADA) LTD. (RESPONDENT) V. INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796 (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS PLANT IN BARRIE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND CLERICAL STAFF, HOSPITALITY ROOM PERSONNEL, CAFETERIA PERSONNEL, CHEMISTS, FORMOSA GARDENS PERSONNEL AND PERSONS COVERED BY A CERTIFICATE ISSUED BY THE BOARD DATED FEBRUARY 8, 1972, TO INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796." (23 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

1474-71-R: CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) V. THE ETOBICOKE GENERAL HOSPITAL (RESPONDENT).

UNIT: "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS EMPLOYED IN THE BOILER ROOM OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT CHIEF ENGINEER AND PERSONS ABOVE THE RANK OF CHIEF ENGINEER." (5 EMPLOYEES IN THE UNIT).

1478-71-R: INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796 (APPLICANT) V. FORMOSA SPRING BREWERY - A DIVISION OF BENSON & HEDGES (CANADA) LTD. (RESPONDENT) V. INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK AND DISTILLERY WORKERS OF AMERICA AFL-CIO-CLC (INTERVENER).

UNIT: "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS IN THE EMPLOY OF THE RESPONDENT, IN THE BOILER ROOM OF ITS PLANT LOCATED IN THE CITY OF BARRIE, SAVE AND EXCEPT CHIEF ENGINEER." (4 EMPLOYEES IN THE UNIT).

1483-71-R: SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 532, AFFILIATED WITH THE S.E.I.U., AFL-CIO-CLC (APPLICANT) V. MACKENZIE NURSING HOMES LTD., CARRYING ON BUSINESS AS THE FLORENCE L. MACKENZIE DOWNTOWN CONVALESCENT CENTRE AND NURSING HOME (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT HAMILTON, SAVE AND EXCEPT PROFESSIONAL NURSING STAFF, PHYSIOTHERAPISTS, OCCUPATIONAL THERAPISTS, SUPERVISORS, FOREMEN, PERSONS ABOVE THE RANK OF SUPERVISOR OR FOREMAN, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (41 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

1487-71-R: CANADIAN FOOD AND ALLIED WORKERS LOCAL UNION 175, CHARTERED BY THE AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (APPLICANT) V. INTERCITY FOOD SERVICES INC. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS RESTAURANTS IN METROPOLITAN TORONTO, SAVE AND EXCEPT HEAD HOSTESS, PERSONS ABOVE THE RANK OF HEAD HOSTESS, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (29 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

1489-71-R: INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION 804, A.F.L. - C.I.O. - C.L.C. (APPLICANT) V. FLEXSTEEL INDUSTRIES (CANADA) LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT NEW HAMBURG, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS

PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (49 EMPLOYEES IN THE UNIT).

1491-71-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (APPLICANT) V. NATIONAL BUILDING DEMOLITION LTD. (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (9 EMPLOYEES IN THE UNIT).

1496-71-R: CHATHAM CONSTRUCTION WORKERS ASSOCIATION, LOCAL NO. 53, AFFILIATED WITH THE CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. 230214 CONSTRUCTION LIMITED OPERATED AS MADIGAN CONSTRUCTION AND DRAINAGE (RESPONDENT).

UNIT: "ALL TRUCK DRIVERS AND CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF ESSEX AND KENT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

1497-71-R: INSURANCE EMPLOYEES UNION, LOCAL 1668, C.L.C. (APPLICANT) V. ECONOMICAL MUTUAL INSURANCE COMPANY (RESPONDENT).

UNIT: "ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT AT LONDON, SAVE AND EXCEPT ASSISTANT MANAGER AND UNDERWRITER, PERSONS ABOVE THE RANK OF ASSISTANT MANAGER AND UNDERWRITER, CLAIMS ADJUSTER AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (34 EMPLOYEES IN THE UNIT).

(SEE DECISION [1972] OLRB REP. 176).

1501-71-R: SERVICE EMPLOYEES UNION, LOCAL 210 AFFILIATED WITH S.E.I.U. A.F. OF L., C.I.O., C.L.C. (APPLICANT) V. BEACON HILL LODGES OF CANADA LTD. (RESPONDENT).

UNIT: "ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT IN WINDSOR, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, CONFIDENTIAL SECRETARY TO THE ADMINISTRATOR AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK." (6 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

1502-71-R: SERVICES EMPLOYEES UNION, LOCAL 210 AFFILIATED WITH S.E.I.U. A.F. OF L., C.I.O., C.L.C. (APPLICANT) V. BEACON HILL LODGES OF CANADA LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN WINDSOR, SAVE AND EXCEPT PROFESSIONAL NURSING STAFF, PHYSIOTHERAPISTS, OCCUPATIONAL THERAPISTS, SUPERVISORS, FOREMEN, PERSONS ABOVE THE RANK OF SUPERVISOR AND FOREMAN, OFFICE AND CLERICAL STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (37 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE REPRESENTATIONS BEFORE IT AND TO THE AGREEMENT OF THE PARTIES).

1503-71-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL 91 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. MOLURE ALEXANDRIA MOULDING OWNED & OPERATED BY ALEXANDRIA SASH & DOOR CO. LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ALEXANDRIA, SAVE AND EXCEPT FOREMEN, THOSE ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF," (55 EMPLOYEES IN THE UNIT).

1507-71-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. ROSS ENTERPRISES (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT SARNIA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (3 EMPLOYEES IN THE UNIT).

1519-71-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE CORPORATION OF THE TOWN OF RENFREW (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL OFFICE, CLERICAL AND TECHNICAL EMPLOYEES OF THE RESPONDENT AT RENFREW, SAVE AND EXCEPT DEPARTMENT HEADS AND PERSONS ABOVE THE RANK OF DEPARTMENT HEAD AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (6 EMPLOYEES IN THE UNIT).

1521-71-R: INTERNATIONAL MOLDERS & ALLIED WORKERS UNION (APPLICANT) V. REYNOLDS ALUMINUM COMPANY OF CANADA LTD., SIDING DIVISION (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT ASSISTANT FOREMEN, PERSONS ABOVE THE RANK OF ASSISTANT FOREMAN, OFFICE AND SALES STAFF, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (51 EMPLOYEES IN THE UNIT).

1528-71-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. SUDBURY GENERAL HOSPITAL OF THE IMMACULATE HEART OF MARY (RESPONDENT) V. INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796 (INTERVENER).

UNIT: "ALL LAY EMPLOYEES OF THE RESPONDENT AT SUDBURY, SAVE AND EXCEPT

PROFESSIONAL MEDICAL STAFF, GRADUATE NURSING STAFF, UNDERGRADUATE NURSES, GRADUATE PHARMACISTS, UNDERGRADUATE PHARMACISTS, GRADUATE DIETITIANS, STUDENT DIETITIANS, TECHNICAL PERSONNEL, SUPERVISORS AND FOREMEN, PERSONS ABOVE THE RANK OF SUPERVISOR AND FOREMAN, OFFICE STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS COVERED BY SUBSISTING COLLECTIVE AGREEMENTS BETWEEN THE RESPONDENT AND INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 796; BETWEEN THE RESPONDENT AND CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 1023; BETWEEN THE RESPONDENT AND NURSES' ASSOCIATION, SUDBURY GENERAL HOSPITAL." (34 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

1529-71-R: THE UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA (APPLICANT) V. WHITNEY MAINTENANCE LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF OXFORD, PERTH, HURON, MIDDLESEX, BRUCE AND ELGIN, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

1531-71-R: OFFICE & PROFESSIONAL EMPLOYEES INTERNATIONAL UNION, LOCAL 225 (APPLICANT) V. LETTER CARRIERS UNION OF CANADA (RESPONDENT).

UNIT: "ALL OFFICE, CLERICAL AND TECHNICAL EMPLOYEES OF THE RESPONDENT AT OTTAWA, SAVE AND EXCEPT ELECTED OFFICERS." (8 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

1537-71-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 1669 (APPLICANT) V. LOBLAW GROCETERIAS CO., LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE DISTRICT OF THUNDER BAY, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (9 EMPLOYEES IN THE UNIT).

1541-71-R: PRINTING SPECIALTIES AND PAPER PRODUCTS UNION, LOCAL 466 (APPLICANT) V. ROBINSON RIGID PLASTICS, A DIVISION OF E. S. & A. ROBINSON (CANADA) LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE, LABORATORY AND SALES STAFF." (9 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

1544-71-R: LONDON AND DISTRICT BUILDING SERVICE WORKERS' UNION, LOCAL 220, S.E.I.U., A.F. OF L., C.I.O., C.L.C. (APPLICANT) V. BOBBIER CONVALESCENT HOME (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT DUTTON, SAVE AND EXCEPT FOREMEN AND SUPERVISORS, PERSONS ABOVE THE RANK OF FOREMAN AND SUPERVISOR, REGISTERED AND GRADUATE NURSES, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (35 EMPLOYEES IN THE UNIT).

1549-71-R: THE OTTAWA NEWSPAPER GUILD LOCAL 205 OF THE NEWSPAPER GUILD (APPLICANT) V. THE OTTAWA CITIZEN A DIVISION OF THE SOUTHAM PRESS LIMITED (RESPONDENT).

UNIT: "ALL PERSONS EMPLOYED BY THE RESPONDENT IN OTTAWA, AS PART-TIME TRUCKERS AND THE PART-TIME LOADING RAMP ATTENDANT." (4 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

1553-71-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. SAULT STE. MARIE AND DISTRICT SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS (RESPONDENT).

UNIT #1: "ALL EMPLOYEES OF THE RESPONDENT AT SAULT STE. MARIE, SAVE AND EXCEPT SHELTER MANAGER, PERSONS ABOVE THE RANK OF SHELTER MANAGER AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK." (6 EMPLOYEES IN THE UNIT).

UNIT #2: "ALL EMPLOYEES OF THE RESPONDENT AT SAULT STE. MARIE REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK." (2 EMPLOYEES IN THE UNIT).

1554-71-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. SUPERIOR AMBULANCE SERVICE (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT SAULT STE. MARIE, SAVE AND EXCEPT SUPERVISORS AND PERSONS ABOVE THE RANK OF SUPERVISOR." (24 EMPLOYEES IN THE UNIT).

1556-71-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE CORPORATION OF THE COUNTY OF PEEL (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE ROAD MAINTENANCE DIVISION OF THE COUNTY OF PEEL, SAVE AND EXCEPT SUB-FOREMEN, PERSONS ABOVE THE RANK OF SUB-FOREMAN, OFFICE STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (48 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

1557-71-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE NIPISING BOARD OF EDUCATION (RESPONDENT).

UNIT: "ALL AUDIO VISUAL TECHNICIAN EMPLOYEES OF THE RESPONDENT EMPLOYED

IN ITS SCHOOLS IN THE GEOGRAPHICAL JURISDICTION OF THE RESPONDENT, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR AND PERSONS COVERED BY AN EXISTING COLLECTIVE AGREEMENT BETWEEN THE NIPISSING BOARD OF EDUCATION AND THE CANADIAN UNION OF PUBLIC EMPLOYEES LOCAL # 1165." (8 EMPLOYEES IN THE UNIT). (THE BOARD NOTED THE ADVICE OF THE APPLICANT THAT THE BARGAINING UNIT CONSTITUTES A TAG END UNIT).

(SEE DECISION [1972] OLRB REP. 173).

1571-71-R: HOTELS, CLUBS, RESTAURANTS, TAVERNS EMPLOYEES UNION LOCAL 261, 1091 WELLINGTON ST., OTTAWA, ONTARIO K1Y 2Y4 (APPLICANT) V. VERSA-FOOD SERVICES LIMITED, FOOD MANAGEMENT SERVICES (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT MICROSYSTEMS INTERNATIONAL LIMITED, 75 MOODIE DRIVE, OTTAWA, SAVE AND EXCEPT THE MANAGER, ASSISTANT MANAGER, CHEF, SUPERVISORS, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (18 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

1572-71-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. NADCO LIMITED (RESPONDENT).

UNIT: "ALL PLUMBERS AND PLUMBERS' APPRENTICES, STEAMFITTERS AND STEAMFITTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF WATERLOO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

1574-71-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) V. MUTTART BUILDERS' SUPPLIES BRANTFORD (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT BRANTFORD, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE, SALES STAFF, OVER-THE-COUNTER SALES CLERKS, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (35 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

1578-71-R: CHRISTIAN TRADE UNIONS OF CANADA (LOCAL 6) (APPLICANT) V. BARBER PLUMBING & HEATING LIMITED (RESPONDENT).

UNIT: "ALL PLUMBERS AND PLUMBERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF WENTWORTH AND THE TOWNSHIP OF NASSAGAWEYA AND THE TOWN OF BURLINGTON IN THE COUNTY OF HALTON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

1587-71-R: CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) V. RE-NOLD CANADA LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS PLANT IN BRANTFORD, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (33 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

1605-71-R: CHATHAM CONSTRUCTION WORKERS ASSOCIATION LOCAL #53, AFFILIATED WITH THE CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. C F A OPERATIONS INC. (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS AND TRUCK DRIVERS IN THE COUNTIES OF ESSEX AND KENT AND ALL EMPLOYEES OF THE RESPONDENT IN THE SAID AREA ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (7 EMPLOYEES IN THE UNIT).

1633-71-R: INTERNATIONAL BROTHERHOOD OF PAINTERS AND ALLIED TRADES, LOCAL UNION 1891 (APPLICANT) V. DAMRON LIMITED (RESPONDENT).

UNIT: "ALL PAINTERS AND PAINTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (9 EMPLOYEES IN THE UNIT). (FOR THE PURPOSE OF CLARITY, THE BOARD DECLARED THAT DRYWALL TAPERS ARE INCLUDED IN THE ABOVE-MENTIONED BARGAINING UNIT).

1639-71-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL #247 (APPLICANT) V. MOROCCO INVESTMENTS INCORPORATED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN PRINCE EDWARD COUNTY AND THE TOWNSHIPS OF LAKE, TUDOR, GRIMSTHORPE, MARMORA, MADOC, ELZEVIR, RAWDON, HUNTINGDON, HUNGERFORD, SIDNEY, THURLOW AND TYENDINAGA IN THE COUNTY OF HASTINGS AND THE TOWNSHIPS OF PERCY, SEYMOUR, CRAMAHE, BRIGHTON AND MURRAY IN THE COUNTY OF NORTHUMBERLAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

APPLICATIONS CERTIFIED SUBSEQUENT TO PRE-HEARING VOTE

1399-71-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL 91 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. CAPITAL CITY TRANSPORT LIMITED (RESPONDENT) V. CANADIAN TRANSPORTATION WORKERS' UNION No. 158, N.C.C.L. (INTERVENER).

UNIT #1: "ALL GARAGE MAINTENANCE EMPLOYEES OF THE RESPONDENT AT ITS TERMINAL IN OTTAWA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, DRIVERS, CHECKERS, DOCKMEN, SECURITY GUARDS, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (13 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	13
NUMBER OF PERSONS WHO CAST BALLOTS	12
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	12
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER	0

UNIT #2: "ALL EMPLOYEES OF THE RESPONDENT WORKING IN OR OUT OF THE OTTAWA TERMINAL, SAVE AND EXCEPT GARAGE EMPLOYEES, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE AND SALES STAFF." (73 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	73
NUMBER OF PERSONS WHO CAST BALLOTS	68
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	44
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER	24

APPLICATIONS CERTIFIED SUBSEQUENT TO POST-HEARING VOTE

534-71-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. A. COPE & SONS LIMITED (RESPONDENT) V. UNITED GLASS & CERAMIC WORKERS OF NORTH AMERICA (AFL-CIO-CLC) AND ITS LOCAL 224 (INTERVENER #1) V. LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 837 (INTERVENER #2) V. TEAMSTERS LOCAL 879 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (INTERVENER #3) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT #1: "ALL EMPLOYEES OF THE RESPONDENT AT ITS PIPE DIVISION IN THE TOWNSHIP OF SALTFLEET IN THE COUNTY OF WENTWORTH SAVE AND EXCEPT THOSE PERSONS COVERED UNDER A COLLECTIVE AGREEMENT WITH THE UNITED GLASS AND CERAMIC WORKERS OF NORTH AMERICA, LOCAL 224, FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (2 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	3
NUMBER OF PERSONS WHO CAST BALLOTS	3
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	3
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	0

UNIT #2: "ALL EMPLOYEES OF THE RESPONDENT AT ITS QUARRY DIVISION IN THE TOWNSHIP OF SALTFLEET IN THE COUNTY OF WENTWORTH SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (20 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS'	
LIST	16
NUMBER OF PERSONS WHO CAST BALLOTS	16
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	9
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	7

1100-71-R: THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA - LOCAL 628 (APPLICANT) V. ALGOMA MAINTENANCE & SERVICE LIMITED (RESPONDENT) V. UNITED STEELWORKERS OF AMERICA (INTERVENER).

UNIT: "ALL PLUMBERS, PLUMBERS' APPRENTICES, PIPEFITTERS AND PIPEFITTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE DISTRICT OF KENORA, INCLUDING THE PATRICIA PORTION, AND THAT PART OF THE RESPONDENT'S PROJECT AT THE MATTA BI MINE SITE LOCATED IN THE DISTRICT OF THUNDER BAY, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST		29
NUMBER OF PERSONS WHO CAST BALLOTS		22
NUMBER OF SPOILED BALLOTS	1	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	20	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	1	

1116-71-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. EXTENDICARE (CANADA) LTD. (RESPONDENT).

- AND -

1132-71-R: SERVICE EMPLOYEES UNION, LOCAL 204 AFFILIATED WITH THE AFL-CIO-CLC (APPLICANT) V. EXTENDICARE (CANADA) LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ST. CATHARINES, SAVE AND EXCEPT PROFESSIONAL NURSING STAFF, PHYSIOTHERAPISTS, OCCUPATIONAL THERAPISTS, SUPERVISORS, FOREMEN, PERSONS ABOVE THE RANK OF SUPERVISOR AND FOREMAN, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (26 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		28
NUMBER OF PERSONS WHO CAST BALLOTS		27
BALLOTS SEGREGATED AND NOT COUNTED	3	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT, CANADIAN UNION OF PUBLIC EMPLOYEE	1	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT, SERVICE EMPLOYEES UNION, LOCAL 204	23	
NUMBER OF BALLOTS MARKED IN FAVOUR OF NO TRADE UNION	0	

1261-71-R: HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION LOCAL 604 AFL-CIO (APPLICANT) V. NEW GRAND HOTEL PETERBORO LTD. (RESPONDENT).

UNIT: "ALL PERSONS EMPLOYED BY THE NEW GRAND HOTEL, PETERBORO LTD. (295 GEORGE ST., NORTH) AND ITS PIZZA VILLA (CORNER PARK AND McDONNELL STS.) IN THE CITY OF PETERBOROUGH, SAVE AND EXCEPT MANAGER, PERSONS ABOVE THE RANK OF MANAGER AND THOSE PERSONS COVERED BY A COLLECTIVE AGREEMENT DATED FEBRUARY 23, 1969 BETWEEN THIS APPLICANT AND THIS RESPONDENT." (33 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		31
NUMBER OF PERSONS WHO CAST BALLOTS	19	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	16	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	3	

1310-71-R: THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. ALGOMA MAINTENANCE & SERVICES LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE DISTRICT OF KENORA, INCLUDING THE PATRICIA PORTION, AND THAT PART OF THE RESPONDENT'S PROJECT AT THE MATTA BI MINE SITE LOCATED IN THE DISTRICT OF THUNDER BAY, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (35 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST		5
NUMBER OF PERSONS WHO CAST BALLOTS	4	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	4	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	0	

1440-71-R: INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION 339 (APPLICANT) V. ALGOMA MAINTENANCE & SERVICES LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL ELECTRICIANS AND ELECTRICIANS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE DISTRICT OF KENORA, INCLUDING THE PATRICIA PORTION, AND THAT PART OF THE RESPONDENT'S PROJECT AT THE MATTA BI MINE SITE LOCATED IN THE DISTRICT OF THUNDER BAY, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (25 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST		20
NUMBER OF PERSONS WHO CAST BALLOTS	15	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	15	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	0	

APPLICATIONS FOR CERTIFICATION DISMISSED DURING FEBRUARY

NO VOTE CONDUCTED

779-71-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. FOUNDATION-JANIN (A JOINT VENTURE) (RESPONDENT). (2 EMPLOYEES).

(SEE DECISION [1972] OLRB REP. 137).

981-71-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA (APPLICANT) V. RIGO FORMING LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (16 EMPLOYEES).

1009-71-R: CANADIAN UNION OF GENERAL EMPLOYEES (APPLICANT) V. GREEN-SPORN BROS. LIMITED (RESPONDENT). (89 EMPLOYEES).

1019-71-R: S.E.U., LOCAL 204, AFFILIATED S.E.I.U., A.F.L., C.I.O., C.L.C. (APPLICANT) V. EXTENDICARE (CANADA) LIMITED (RESPONDENT) V. CANADIAN UNION OF PUBLIC EMPLOYEES (INTERVENER). (52 EMPLOYEES).

(SEE DECISION [1972] OLRB REP. 122).

1392-71-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. J. W. CROOKS COMPANY, LIMITED CARRYING ON BUSINESS IN THE NAME OF CROOKS REXALL PHARMACY AND TARGET DISCOUNT PHARMACY INC. CARRYING ON BUSINESS IN THE NAME OF TARGET DISCOUNT PHARMACY (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT THUNDER BAY, SAVE AND EXCEPT ASSISTANT MANAGERS, PERSONS ABOVE THE RANK OF ASSISTANT MANAGER, PHARMACISTS, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (91 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

(SEE DECISION [1972] OLRB REP. 126).

1409-71-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. MARTIN NURSING HOMES LTD. (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (46 EMPLOYEES).

1456-71-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL & ORNAMENTAL IRON WORKERS, LOCAL 759 (APPLICANT) V. ALGOMA MAINTENANCE & SERVICES LIMITED (RESPONDENT). (8 EMPLOYEES).

1458-71-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 837 (APPLICANT) V. MAPLE ENGINEERING AND CONSTRUCTION CO. LTD. (RESPONDENT) V. CHRISTIAN LABOUR ASSOCIATION OF CANADA (INTERVENER). (6 EMPLOYEES).

1506-71-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 837 (APPLICANT) V. AIKEN, BARRON & ROEPKE LIMITED (RESPONDENT). (2 EMPLOYEES).

(SEE DECISION [1972] OLRB REP. 157).

1510-71-R: THE FLEXSTEEL EMPLOYEES ASSOCIATION (APPLICANT) V. FLEXSTEEL INDUSTRIES (CANADA) LTD. (RESPONDENT). (48 EMPLOYEES).

1523-71-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL ORNAMENTAL IRON WORKERS, LOCAL UNION # 765 OTTAWA, ONT. (APPLICANT) V. OMER BOURBONNAIS AND FILS LTEE. SONS LTD. FER ORNAMENTAL - ORNAMENTAL IRON WORKS (RESPONDENT).

UNIT: "ALL IRONWORKERS IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

1551-71-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA (APPLICANT) V. TRIDENT CONSTRUCTION LTD. (RESPONDENT). (5 EMPLOYEES).

CERTIFICATION DISMISSED SUBSEQUENT TO PRE-HEARING VOTE

1099-71-R: LUMBER & SAWMILL WORKERS UNION, LOCAL 2537, THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. WHOLESALE HOMES LIMITED (RESPONDENT).

- AND -

1113-71-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 1036 (APPLICANT) V. WHOLESALE HOMES LIMITED (RESPONDENT).

VOTING CONSTITUENCY: "ALL EMPLOYEES OF THE RESPONDENT AT BLIND RIVER, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (31 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		23
NUMBER OF PERSONS WHO CAST BALLOTS		23
BALLOTS SEGREGATED AND NOT COUNTED	1	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT LUMBER & SAWMILL WORKERS UNION, LOCAL 2537	2	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 1036	0	
NUMBER OF BALLOTS MARKED IN FAVOUR OF NO TRADE UNION	20	

1223-71-R: CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) V. THE STANLEY STEEL COMPANY LIMITED (RESPONDENT) V. UNITED STEELWORKERS OF AMERICA (INTERVENER).

VOTING CONSTITUENCY: "ALL EMPLOYEES OF THE RESPONDENT AT HAMILTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE STAFF." (156 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON VOTERS'	
LIST	159
NUMBER OF PERSONS WHO CAST BALLOTS	155

BALLOT BOX SEALED

(SEE DECISION [1972] OLRB REP. 181).

1391-71-R: UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA AFL-CIO-CLC (APPLICANT) V. WHITMAN GOLDEN LIMITED (RESPONDENT).

VOTING CONSTITUENCY: "ALL EMPLOYEES OF THE RESPONDENT AT GALT, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN AND FORELADY, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (55 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON VOTERS'	
LIST	42
NUMBER OF PERSONS WHO CAST BALLOTS	40
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	14
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	26

1466-71-R: TEXTILE WORKERS UNION OF AMERICA, AFL-CIO-CLC (APPLICANT) V. ACRITEX YARNS LIMITED (RESPONDENT) V. CANADIAN UNION OF OPERATING ENGINEERS (INTERVENER).

VOTING CONSTITUENCY: "ALL EMPLOYEES OF THE RESPONDENT AT PERTH, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN OR FORELADY, OFFICE, CLERICAL AND SALES STAFF, STATIONARY ENGINEERS, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (199 EMPLOYEES). (THE BOARD FURTHER STATED IN ITS DECISION DATED FEBRUARY 1ST, 1972: "... THAT DYEHOUSE LABORATORY AND DRUG ROOM STAFF, MILL TESTING OFFICE STAFF, AND RETAIL STORE STAFF ARE NOT INCLUDED IN THE VOTING CONSTITUENCY.")

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		196
NUMBER OF PERSONS WHO CAST BALLOTS	181	
NUMBER OF SPOILED BALLOTS	2	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	82	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	97	

CERTIFICATION DISMISSED SUBSEQUENT TO POST-HEARING VOTE

1119-71-R: RETAIL CLERKS UNION, LOCAL 486, CHARTERED BY RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. PROVIGO (OTTAWA) INC. (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS RETAIL STORES IN CORNWALL REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (7 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST		9
NUMBER OF PERSONS WHO CAST BALLOTS	9	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	2	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	7	

1245-71-R: GENERAL TRUCK DRIVERS' UNION LOCAL 938 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. FREIGHTMASTER LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WORKING IN AND OUT OF LINDSAY, SAVE AND EXCEPT DISPATCHER AND FOREMAN, PERSONS ABOVE THE RANK OF DISPATCHER AND FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (9 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST		8
NUMBER OF PERSONS WHO CAST BALLOTS	8	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	4	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	4	

1398-71-R: SERVICE EMPLOYEES UNION, LOCAL 204, AFFILIATED WITH THE S.E.I.U., AF OF L. CIO, CLC. (APPLICANT) V. AMALGAMATED AMBULANCE SERVICE, A DIVISION OF RELIABLE AMBULANCE SERVICE LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (52 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED		
VOTERS' LIST		51
NUMBER OF PERSONS WHO CAST BALLOTS	43	
NUMBER OF SPOILED BALLOTS	1	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	20	
NUMBER OF BALLOTS MARKED AGAINST		
APPLICANT	22	

1405-71-R: INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS - AFL, CIO, CLC (APPLICANT) V. GILBARCO CANADA LTD. (RESPONDENT) V. GILBARCO EMPLOYEES UNION (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS PLANT IN BROCKVILLE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, LABORATORY TECHNICIANS DEVELOPMENT AND ENGINEERING STAFF, OFFICE AND SALES STAFF." (135 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS'		
LIST		114
NUMBER OF PERSONS WHO CAST BALLOTS	108	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	23	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF INTERVENER	85	

APPLICATIONS FOR CERTIFICATION WITHDRAWN DURING FEBRUARY

1099-71-R: LUMBER & SAWMILL WORKERS UNION, LOCAL 2537, THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. WHOLESALE HOMES LIMITED (RESPONDENT).

- AND -

1113-71-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 1036 (APPLICANT) V. WHOLESALE HOMES LIMITED (RESPONDENT). (31 EMPLOYEES).

1186-71-R: INTERNATIONAL ALLIANCE THEATRICAL STAGE EMPLOYEES AND MOVING PICTURE MACHINE OPERATORS OF THE UNITED STATES AND CANADA, LOCAL 58, TORONTO (APPLICANT) V. CANADIAN PACIFIC HOTELS LIMITED, AS OWNER AND OPERATOR OF THE ROYAL YORK HOTEL (RESPONDENT). (NO EMPLOYEES).

1274-71-R: CANADIAN UNION OF GENERAL EMPLOYEES (APPLICANT) V. GREEN-SPoon Bros. Limited (RESPONDENT). (10 EMPLOYEES).

1376-71-R: CANADIAN UNION OF GENERAL EMPLOYEES (APPLICANT) V. GREEN-SPoon Bros. Limited (RESPONDENT). (10 EMPLOYEES).

1485-71-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 27, AFFILIATED WITH THE CARPENTERS' DISTRICT COUNCIL OF TORONTO AND VICINITY (APPLICANT) V. DIREZIONE LAVORI OF CANADA LTD. (RESPONDENT). (9 EMPLOYEES).

1518-71-R: LABORERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 607 (APPLICANT) V. ALGOMA MAINTENANCE & SERVICES LTD. (RESPONDENT) V. LUMBER AND SAWMILL WORKERS UNION, LOCAL 2693 OF THE UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA (INTERVENER). (33 EMPLOYEES).

1530-71-R: THE UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA (APPLICANT) V. D.R. CRAWFORD CONSTRUCTION LIMITED (RESPONDENT). (4 EMPLOYEES).

1536-71-R: INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIP BUILDERS BLACKSMITHS, FORGERS AND HELPERS, LOCAL #128 (APPLICANT) V. TANKS, VESSELS AND PIPE LIMITED (RESPONDENT). (7 EMPLOYEES).

1545-71-R: AMALGAMATED CLOTHING WORKERS OF AMERICA (APPLICANT) V. K & K CLOTHING (RESPONDENT). (7 EMPLOYEES).

1559-71-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. FOUNDATION GENERAL ENGINEERING & CONSTRUCTION (DIVISION OF THE FOUNDATION COMPANY OF CANADA LIMITED) (RESPONDENT). (4 EMPLOYEES).

1563-71-R: SHOPMEN'S LOCAL UNION No. 757 OF THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, (A.F. OF L., C.I.O.) (APPLICANT) V. ALUMICOR LIMITED (RESPONDENT). (23 EMPLOYEES).

1582-71-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. THE FOUNDATION COMPANY OF CANADA LIMITED (RESPONDENT). (4 EMPLOYEES).

1584-71-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 1267 (OIL & GAS BURNER TECHNICIANS) (APPLICANT) V. TORONTO HANDICAPPED CO. (RESPONDENT). (28 EMPLOYEES).

1594-71-R: CANADIAN UNION OF OPERATING ENGINEERS, LOCAL 101 (APPLICANT) V. STANLEY STEEL COMPANY LIMITED (RESPONDENT). (154 EMPLOYEES).

1596-71-R: THE INTER-PROVINCIAL COUNCIL OF LATHERS ON BEHALF OF LOCALS: 97, 562, 145, 545, 551, 360, 423, 555, 540, AND 439 (APPLICANT) V. PEL DRYWALL SYSTEMS LIMITED (RESPONDENT). (4 EMPLOYEES).

1601-71-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT) V. BROOKSIDE-PRICE'S DAIRY (TRENT-QUINTE) LIMITED (RESPONDENT). (3 EMPLOYEES).

APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS DISPOSED
OF DURING FEBRUARY

1512-71-R: GRAHAM TRANSPORT LIMITED (APPLICANT) V. GENERAL TRUCK DRIVERS UNION, LOCAL 938 (RESPONDENT). (NO EMPLOYEES). (DISMISSED).

1595-71-R: THE EMPLOYEES OF THE STANLEY STEEL COMPANY (APPLICANT) V. THE UNITED STEELWORKERS OF AMERICA (RESPONDENT) V. THE STANLEY STEEL COMPANY LIMITED (INTERVENER). (159 EMPLOYEES). (WITHDRAWN).

APPLICATIONS FOR DECLARATION THAT STRIKE UNLAWFUL DISPOSED OF DURING
FEBRUARY

782-71-U: P. J. DALY PLASTERING CONTRACTING LIMITED (APPLICANT) V. UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 18, CHARLES GIUGLIANO, THOMAS FENWICK (RESPONDENT). (WITHDRAWN).

1210-71-U: HIGH-RISE FORMING LIMITED (APPLICANT) V. ANGUS FROATES, GARY COLE, CLARENCE HEAD, CHARLES GEE, PHIL GAUTHEIR, GEORGE MOULTON, HAROLD BLACKELY, AND QUINTE ST. LAWRENCE BUILDING AND CONSTRUCTION TRADES COUNCIL (RESPONDENTS). (WITHDRAWN).

1307-71-U: KANSAS CONSTRUCTION LIMITED (APPLICANT) V. COUNCIL OF CONCRETE FORMING TRADE UNIONS AND LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL 183 (RESPONDENTS). (WITHDRAWN).

1602-71-U: THE CANADIAN LITHOGRAPHERS ASSOCIATION INC., COUNCIL OF PRINTING INDUSTRIES OF CANADA AND SOUTHAM MURRAY, A DIVISION OF THE SOUTHAM PRINTING COMPANY LIMITED (APPLICANTS) V. ROBERT ALLAN, ET AL. (RESPONDENTS). (GRANTED).

(SEE DECISION [1972] OLRB REP. 168).

1608-71-U: THE BUDD AUTOMOTIVE COMPANY OF CANADA LIMITED (APPLICANT) V. T. AICKEN, ET AL. (RESPONDENTS). (WITHDRAWN).

APPLICATIONS FOR CONSENT TO PROSECUTE DISPOSED OF DURING FEBRUARY

1043-71-U: INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK AND DISTILLERY WORKERS OF AMERICA, AFL-CIO-CLC (APPLICANT) V. SEVEN-UP (ONTARIO) LTD. (RESPONDENT). (WITHDRAWN).

1176-71-U: WILSON ERECTORS LIMITED (APPLICANT) V. 1) INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 2) HARVEY HERRON 3) ROD McKINNON 4) WILBERT A. WHITEMAN 5) GLEN McMULLEN (RESPONDENTS). (WITHDRAWN).

1211-71-U: HIGH RISE FORMING LIMITED (APPLICANT) V. ANGUS FROATES, GARY COLE, CLARENCE HEAD, CHARLES GEE, PHIL GAUTHEIR, GEORGE MOULTON, HAROLD BLACKELY AND QUINTE ST. LAWRENCE BUILDING AND CONSTRUCTION TRADES COUNCIL (RESPONDENTS). (WITHDRAWN).

1419-71-U: INTERNATIONAL BROTHERHOOD OF BOOKBINDERS, LOCAL 28 (APPLICANT) V. BROOKER TRADE BINDERY LIMITED AND JOHN BROOKER (RESPONDENTS). (DISMISSED).

1495-71-U: MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES, LOCAL 647 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. THE BORDEN COMPANY, LIMITED (RESPONDENT). (DISMISSED).

COMPLAINTS UNDER SECTION 79 (FORMERLY S. 65) (UNFAIR LABOUR PRACTICE)

DISPOSED OF DURING FEBRUARY

1304-71-U: TEAMSTERS LOCAL UNION No. 879 (COMPLAINANT) V. SEAWAY NEWS Co. LTD. (RESPONDENT). (WITHDRAWN).

1341-71-U: NURSES' ASSOCIATION HALTON COUNTY HEALTH UNIT (COMPLAINANT) V. THE CORPORATION OF THE COUNTY OF HALTON (RESPONDENT). (WITHDRAWN).

1344-71-U: ELIZABETH EWING (COMPLAINANT) V. BAKERY & CONFECTIONERY WORKERS INTERNATIONAL UNION OF AMERICA, LOCAL 426 (RESPONDENT). (WITHDRAWN).

1384-71-U: CANADIAN UNION OF PUBLIC EMPLOYEES (COMPLAINANT) V. WOMEN'S COLLEGE HOSPITAL (RESPONDENT). (DISMISSED).

(SEE DECISION [1972] OLRB REP. 142).

1385-71-U: CANADIAN UNION OF PUBLIC EMPLOYEES (COMPLAINANT) V. TORONTO GENERAL HOSPITAL (RESPONDENT). (DISMISSED).

(SEE DECISION [1972] OLRB REP. 152).

1431-71-U: HERVE HOULE (COMPLAINANT) V. LONG SAULT FABRICS LIMITED (RESPONDENT). (DISMISSED).

APPLICATIONS UNDER SECTION 39 (FORMERLY S. 35(A)) DISPOSED OF DURING

FEBRUARY

119-70-M: GERRIT SLUYS (APPLICANT) V. SERVICE EMPLOYEES' INTERNATIONAL UNION, LOCAL 210, A.F. OF L., C.I.O., C.L.C. (RESPONDENT TRADE UNION) V. THE SISTERS OF ST. JOSEPH OF THE DIOCESE OF LONDON IN ONTARIO, AS THE OWNER AND OPERATOR OF ST. JOSEPH'S HOSPITAL, CHATHAM, ONTARIO (RESPONDENT EMPLOYER). (GRANTED).

120-70-M: MARGARET TOLSMA (APPLICANT) V. SERVICE EMPLOYEES' INTERNATIONAL UNION, LOCAL 210, A.F. OF L., C.I.O., C.L.C. (RESPONDENT TRADE UNION) V. THE SISTERS OF ST. JOSEPH OF THE DIOCESE OF LONDON IN ONTARIO, AS THE OWNER AND OPERATOR OF ST. JOSEPH'S HOSPITAL, CHATHAM, ONTARIO (RESPONDENT EMPLOYER). (GRANTED).

121-70-M: HESSY VANDER SLUIS (PRESENTLY HESSY BYMA) (APPLICANT) V. SERVICE EMPLOYEES' INTERNATIONAL UNION, LOCAL 210, A.F. OF L., C.I.O., C.L.C., (RESPONDENT TRADE UNION) V. THE SISTERS OF ST. JOSEPH OF THE DIOCESE OF LONDON IN ONTARIO, AS THE OWNER AND OPERATOR OF ST. JOSEPH'S HOSPITAL, CHATHAM, ONTARIO (RESPONDENT EMPLOYER). (GRANTED).

122-70-M: LENY WITTERHOLT (APPLICANT) V. SERVICE EMPLOYEES' INTERNATIONAL UNION, LOCAL 210, A.F. OF L., C.I.O., C.L.C. (RESPONDENT TRADE UNION) V. THE SISTERS OF ST. JOSEPH OF THE DIOCESE OF LONDON IN ONTARIO, AS THE OWNER AND OPERATOR OF ST. JOSEPH'S HOSPITAL, CHATHAM, ONTARIO (RESPONDENT EMPLOYER). (GRANTED).

123-70-M: GERRIT JOHN BRINKMAN, SR. (APPLICANT) V. SERVICE EMPLOYEES' INTERNATIONAL UNION, LOCAL 210, A.F. OF L., C.I.O., C.L.C. (RESPONDENT TRADE UNION) V. THE SISTERS OF ST. JOSEPH OF THE DIOCESE OF LONDON IN ONTARIO, AS THE OWNER AND OPERATOR OF ST. JOSEPH'S HOSPITAL, CHATHAM, ONTARIO (RESPONDENT EMPLOYER). (GRANTED).

126-70-M: ROELOFJE KLINGENBERG (APPLICANT) V. LONDON AND DISTRICT BUILDING SERVICE WORKERS' UNION, LOCAL 220, S.E.I.U., A.F. OF L., C.I.O., C.L.C. (RESPONDENT TRADE UNION) V. WOODSTOCK GENERAL HOSPITAL TRUST (RESPONDENT EMPLOYER). (GRANTED).

305-71-M: BERTHA BOERSEMA (APPLICANT) V. SERVICE EMPLOYEES' INTERNATIONAL UNION, LOCAL 210, A.F. OF L., C.I.O., C.L.C. (RESPONDENT TRADE UNION) V. THE SISTERS OF ST. JOSEPH OF THE DIOCESE OF LONDON IN ONTARIO, AS THE OWNER AND OPERATOR OF ST. JOSEPH'S HOSPITAL, CHATHAM, ONTARIO (RESPONDENT EMPLOYER). (GRANTED).

924-71-M: THEODORE HOGETERP (APPLICANT) V. INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW), LOCAL 222 (RESPONDENT TRADE UNION) V. GENERAL MOTORS OF CANADA LIMITED (RESPONDENT EMPLOYER). (GRANTED).

(SEE DECISION [1972] OLRB REP. 132).

1079-71-M: JOHN H.A. PLUIMERS (APPLICANT) V. INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, LOCAL 880 (RESPONDENT TRADE UNION) V. MAEDEL'S BEVERAGES LIMITED (RESPONDENT EMPLOYER). (GRANTED).

1188-71-M: TONY DRYFHOUT (APPLICANT) V. TEXTILE WORKERS UNION OF AMERICA (RESPONDENT TRADE UNION) V. SOMERVILLE PLASTICS DIVISION OF SOMERVILLE INDUSTRIES LIMITED (RESPONDENT EMPLOYER). (GRANTED).

1443-71-M: LEONARD BROERSMA (APPLICANT) V. THE INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, U.A.W. LOCAL NO. 222 (RESPONDENT TRADE UNION) V. GENERAL MOTORS OF CANADA LIMITED (RESPONDENT EMPLOYER). (GRANTED).

1447-71-M: MARIA KRABBE (APPLICANT) V. LONDON AND DISTRICT BUILDING SERVICE WORKERS' UNION, LOCAL 220, S.E.I.U.-A.F.L.-C.I.O.-C.L.C. (RESPONDENT TRADE UNION) V. WOODSTOCK GENERAL HOSPITAL TRUST (RESPONDENT EMPLOYER). (WITHDRAWN).

1457-71-M: HENRY SCHUURMAN (APPLICANT) V. TEAMSTERS LOCAL UNION NO. 879 (RESPONDENT TRADE UNION) V. WM. R. BARNES CO. LIMITED (RESPONDENT EMPLOYER). (GRANTED).

APPLICATION FOR CONSENT TO EARLY TERMINATION OF COLLECTIVE AGREEMENT

1467-71-M: THE EMPLOYERS' COMMITTEE OF THE LINEN SUPPLY INDUSTRY OF TORONTO (EMPLOYER) V. LAUNDRY, DRY CLEANING AND DYE HOUSE WORKERS' INTERNATIONAL UNION, LOCAL 351 (TRADE UNION). (GRANTED).

APPLICATIONS UNDER SECTION 55 (FORMERLY S. 47A) DISPOSED OF DURING
FEBRUARY

1005-71-R: PARNELL FOODS LIMITED (TORONTO DIVISION) (APPLICANT) v. LOCAL 908, UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA, AFL:CIO:CLC (RESPONDENT) v. RETAIL CLERKS INTERNATIONAL ASSOCIATION (INTERVENER #1) v. CERTAIN EMPLOYEES (INTERVENER #2).

VOTING CONSTITUENCY: "ALL EMPLOYEES OF PARNELL FOODS LIMITED COVERED BY THE COLLECTIVE AGREEMENT MADE BETWEEN NAVCO FOOD SERVICES LIMITED (FORMERLY NATIONAL AUTOMATIC VENDING COMPANY LIMITED) AND AUTOMATIC VENDING EMPLOYEES UNION, DATED APRIL 16, 1969, THE RIGHTS, PRIVILEGES AND DUTIES OF WHICH WERE ACQUIRED BY RETAIL CLERKS INTERNATIONAL ASSOCIATION BY DECLARATION OF THE BOARD DATED JUNE 14, 1971 AND BY THE COLLECTIVE AGREEMENT BETWEEN PARNELL FOODS LIMITED AND LOCAL 908, UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA, AFL:CIO:CLC, WHICH EXPIRES ON THE 5TH DAY OF APRIL, 1973".

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		84
NUMBER OF PERSONS WHO CAST BALLOTS		96
BALLOTS SEGREGATED AND NOT COUNTED	12	
NUMBER OF SPOILED BALLOTS	1	
NUMBER OF BALLOTS MARKED IN FAVOUR OF RESPONDENT, LOCAL 908, UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA, AFL:CIO:CLC	47	
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER, RETAIL CLERKS INTERNATIONAL ASSOCIATION	36	

1062-71-R: THE INTERNATIONAL UNION UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (U.A.W.) AND ITS LOCAL 984 (APPLICANT) v. CANADIAN ACME SCREW & GEAR LIMITED, MONROE ACME LIMITED, MAREMONT ACME LIMITED, MAECO SHOCK ABSORBER LTD., AND MUTUAL WAREHOUSING LIMITED (RESPONDENTS). (WITHDRAWN).

1126-71-R: MAECO SHOCK ABSORBER LTD. (APPLICANT) v. THE INTERNATIONAL UNION UNITED AUTOMOBILE AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (U.A.W.) AND ITS LOCAL 984 (RESPONDENT). (WITHDRAWN).

1522-71-R: RETAIL CLERKS UNION, LOCAL 206, CHARTERED BY THE RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) v. LOBLAW GROCETERIAS CO. LIMITED (RESPONDENT). (GRANTED).

JURISDICTIONAL DISPUTES

971-71-JD: MASON-KIEWIT (COMPLAINANT) V. INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 353, AND LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (RESPONDENTS).

(SEE DECISION [1972] OLRB REP. 169).

1149-71-JD: LONG BRANCH WINDOW AND METAL CLEANING LIMITED (COMPLAINANT) V. INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL 721 AND LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (RESPONDENTS).

(SEE DECISION [1972] OLRB REP. 129).

1305-71-JD: NORTHDOWN DRYWALL & CONSTRUCTION LIMITED (COMPLAINANT) V. 1) CARPENTERS DISTRICT COUNCIL OF TORONTO & VICINITY ON BEHALF OF LOCAL UNIONS 27, 666, 681, 1133, 1747, 1963, 3277 AND 3233 OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA 2) THE WOOD, WIRE & METAL LATHERS UNION LOCAL 562 3) CAMSTON LIMITED (RESPONDENTS). (WITHDRAWN).

1315-71-JD: P. J. DALY PLASTERING LIMITED (COMPLAINANT) V. UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL 18, THE WOOD, WIRE AND METAL LATHERS INTERNATIONAL UNION, LOCAL 145, COOPER CONSTRUCTION COMPANY (EASTERN) LIMITED (RESPONDENTS). (WITHDRAWN).

1476-71-JD: PILKINGTON BROTHERS (CANADA) LIMITED (COMPLAINANT) V. 1. INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL & ORNAMENTAL IRONWORKERS OF AMERICA, LOCALS 700 AND 736 2. THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS, LOCAL 1946 (RESPONDENTS). (WITHDRAWN).

APPLICATIONS FOR DETERMINATION UNDER SECTION 95(2) (FORMERLY S. 79(2))

DISPOSED OF DURING FEBRUARY

1375-71-M: THE ONTARIO COUNTY BOARD OF EDUCATION (APPLICANT) V. CANADIAN UNION OF PUBLIC EMPLOYEES LOCAL 218 (RESPONDENT).

- AND -

1383-71-M: CANADIAN UNION OF PUBLIC EMPLOYEES LOCAL 218 (APPLICANT) V. THE ONTARIO COUNTY BOARD OF EDUCATION (RESPONDENT). (DISMISSED).

1418-71-M: THE CORPORATION OF THE CITY OF SUDBURY (APPLICANT) V. CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 207 (RESPONDENT). (DISMISSED).

REFERENCE TO BOARD PURSUANT TO SECTION 96 (FORMERLY S. 79A)

1484-71-M: MOBILE MIX CONCRETE PRODUCTS (1971) LIMITED (EMPLOYER) V. TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS UNION, LOCAL 141 (TRADE UNION). (DISMISSED).

APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION - CERTIFICATION

447-71-R: SERVICE EMPLOYEES UNION, LOCAL 204, AFFILIATED WITH THE S.E.I.U. A.F. OF L., C.I.O., C.L.C. (APPLICANT) V. NATION-WIDE INTERIOR MAINTENANCE CO. LTD. (RESPONDENT). (REQUEST DENIED).

1019-71-R: S.E.U., LOCAL 204, AFFILIATED S.E.I.U., A.F.L., C.I.O., C.L.C. (APPLICANT) V. EXTENDICARE (CANADA) LIMITED (RESPONDENT) V. CANADIAN UNION OF PUBLIC EMPLOYEES (INTERVENER). (REQUEST DENIED).

1413-71-R: THE CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE CORPORATION OF THE TOWNSHIP OF BLACK RIVER - MATHESON (RESPONDENT). (REQUEST DENIED).

APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION - SECTION 79

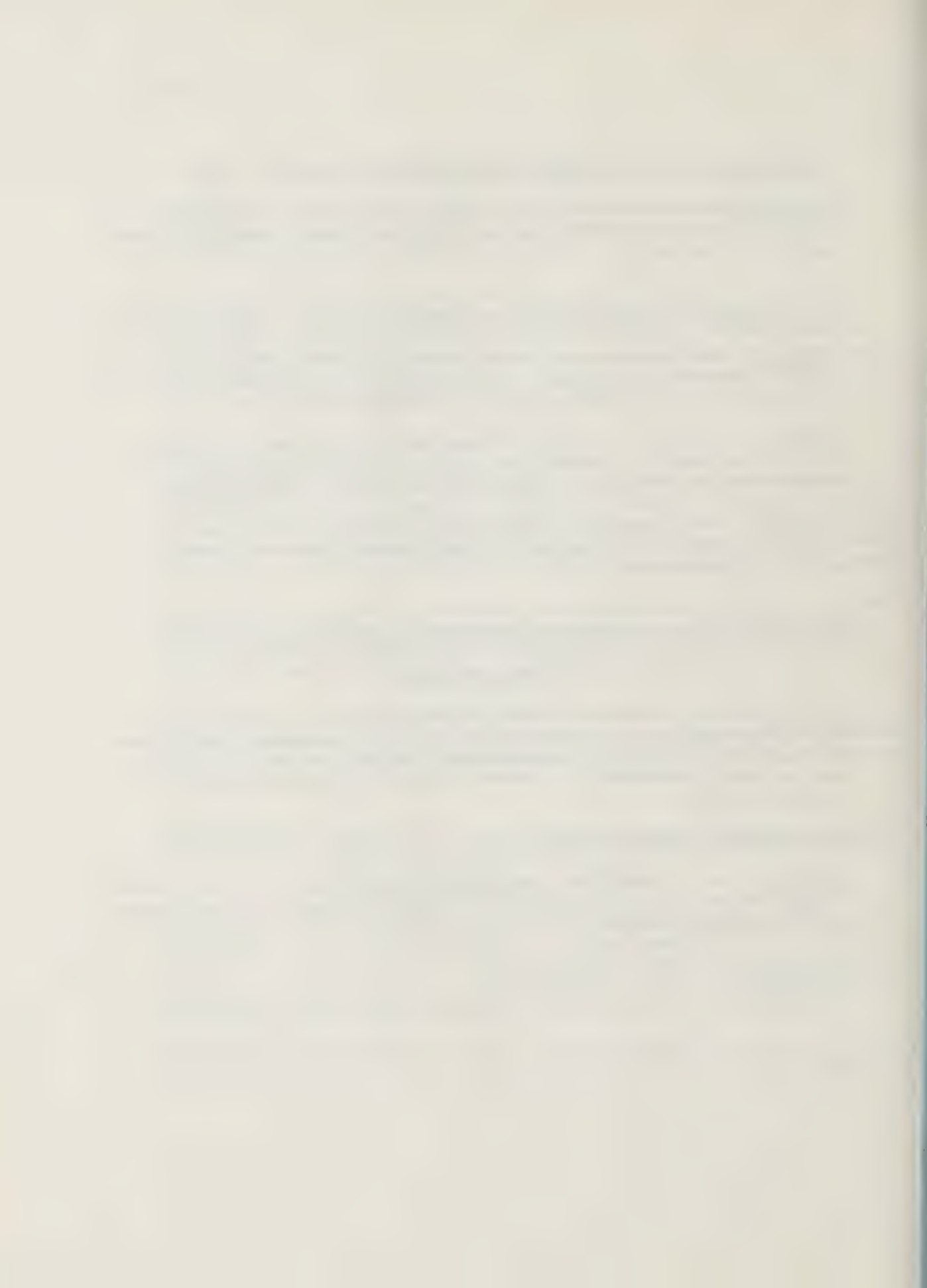
(FORMERLY S. 65)

339-71-U: MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES LOCAL 647 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (COMPLAINANT) V. SWISS CHALET B-Q A DIVISION OF HARVEY FOODS (RESPONDENT). (REQUEST DENIED).

(SEE DECISION [1972] OLRB REP. 162).

872-71-U: THE INTERNATIONAL BROTHERHOOD OF PAINTERS AND ALLIED TRADES - LOCAL UNION 1783 (COMPLAINANT) V. FANSHAWE PAINTING LIMITED (RESPONDENT). (REQUEST DENIED).

(SEE DECISION [1972] OLRB REP. 153).



Government
Publications

72] OLRB REP.

MARCH

PAGES 186 - 287

20NLR
054



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Monthly Report



NTARIO LABOUR RELATIONS BOARD

ONTARIO LABOUR RELATIONS BOARD REPORTS

A MONTHLY SERIES OF DECISIONS FROM THE

ONTARIO LABOUR RELATIONS BOARD

CITED [1972] OLRB REP.

CASES REPORTED

A AND W CARPENTRY RE C.J.A. L. 2466 AND GROUP OF EMPLOYEES...	198
ALGOMA MAINTENANCE & SERVICES LIMITED RE LUMBER AND SAWMILL WORKERS UNION LOCAL 2693 OF THE C.J.A.....	263
ATLAS STEELS COMPANY, A DIVISION OF RIO ALGOM MINES LTD. RE CANADIAN STEELWORKERS UNION OF CANADA AND U.S.A.....	274
BARRIE CABLE TV LIMITED RE N.A.B.E.T.....	212
THE BRYANT PRESS LIMITED RE TORONTO TYPOGRAPHICAL UNION NO. 91.....	186
CANADA SAFEWAY LIMITED RE R.C.I.A.....	262
THE CANADIAN LABOUR CONGRESS RE THE CANADIAN LABOUR CONGRESS REPRESENTATIVE'S UNION.....	211
CANADIAN MACHINERY MOVERS LIMITED RE C.J.A.....	189
COHEN CONSTRUCTION COMPANY RE LABOURERS' L. 1089 AND GROUP OF EMPLOYEES.....	265
COMET CARPENTERS LTD., RE C.J.A. L. 1190 AND GROUP OF EMPLOY- EES.....	194
CORPORATION OF THE CITY OF HAMILTON RE C.U.P.E. L. 167.....	223
DIETRICH & KOEHLER CONSTRUCTION LTD., AND D-K CONSTRUCTION LIMITED RE L. 1940 C.J.A. AND GRAND RIVER VALLEY DIS- TRICT COUNCIL OF THE C.J.A. ON BEHALF OF LOCALS UNIONS 498, 949, 1940 AND 2173.....	234
DONALD SERVANT ELECTRIC LIMITED RE WILLIAM WARCHOW ESQ., BUSINESS MANAGER, I.B.E.W. L. 586.....	226
ELLIS DON LIMITED RE ACME LATHING CO. LTD.; EASTWAY CONTRACT- ING COMPANY; CARPENTERS' DISTRICT COUNCIL OF TORONTO AND VICINITY, ON BEHALF OF LOCAL UNIONS 27, 666, 681, 1133, 1747, 1963, 3227 AND 3233 OF C.J.A.; L. 97, W.W.M.L.....	215
EXTRUDED PLASTIC PRODUCTS LTD. RE I.M.A.W. AND GROUP OF EM- PLOYEES.....	268

FORD MOTOR COMPANY OF CANADA LIMITED AND L. 200 U.A.W. RE DONALD G. GEBBIE AND J. MICHAEL LONGMOORE.....	222
H. J. MCFARLAND CONSTRUCTION COMPANY LIMITED RE I.U.O.E. L. 793.....	213
HAMILTON PUBLIC LIBRARY BOARD RE THE ASSOC. OF PROFESSIONAL LIBRARIANS OF THE HAMILTON PUBLIC LIBRARY.....	268
KINGSWAY BUILDERS RE C.J.A. L. 2486 AND EMPLOYEE.....	224
LOEB, M. (LONDON) LIMITED RE CANADIAN FOOD AND ALLIED WORKERS LOCAL UNION 175, CHARTERED BY AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL - CIO - CLC...	197
MARTEL, J. E. & SONS LUMBER LIMITED RE I.W.A. AND GROUP OF EMPLOYEES.....	191
MARTEL, J. E. & SONS LUMBER LIMITED RE I.W.A. AND GROUP OF EMPLOYEES.....	246
MECHANICAL CONTRACTORS ASSOCIATION HAMILTON AND P.P.F. L. 67 AND METROPOLITAN HAMILTON HOUSE BUILDERS' ASSOCIATION AND PIPE LINE CONTRACTORS ASSOCIATION OF CANADA.....	238
NORTHERN ELECTRIC COMPANY LIMITED RE U.A.W. AND CANADIAN UNION OF COMMUNICATION WORKERS AND U.E.....	248
NORTHERN ELECTRIC COMPANY LIMITED RE U.E.....	205
OTTAWA BOARD OF EDUCATION RE C.U.P.E. AND N.A.B.E.T. AND GROUP OF EMPLOYEES.....	287
PERF CONSTRUCTION COMPANY RE L.I.U. L. 183 AND O.P.C.M. L. 172	225
QUEEN'S UNIVERSITY AT KINGSTON RE C.U.P.E. AND GROUP OF EM- PLOYEES.....	267
RUTHERFORD'S DAIRY LIMITED RE GEORGE C. BAIRD AND INTERNA- TIONAL BROTHERHOOD OF TEAMSTERS, LOCAL 647.....	240
SHERATON LIMITED - SHERATON-CONNAUGHT HOTEL RE ANTHONY J. VIS AND THE HAMILTON BEVERAGE DISPENSERS UNION, LOCAL 197...	249
STAR STEEL LTD. RE INTERNATIONAL UNION OF DISTRICT 50, ALLIED AND TECHNICAL WORKERS OF THE UNITED STATES AND CANADA...	272

STEINBERG'S LIMITED RE CANADIAN MERCHANDISING EMPLOYEES, UNION AND RETAIL AND FOOD EMPLOYEES LOCAL UNION 175, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL- CIO-CLC AND C.J.A. L. 93 AND R.C.I.A. AND RETAIL CLERKS UNION, L. 486 CHARTERED BY THE R.C.I.A.....	192
SUNNYBROOK FOOD MARKET (KEELE) LTD. RE R.C.I.A.....	210
SUNRISE PAVING & CONSTRUCTION Co. LTD. RE L.I.U. L. 183 AND O.P.C.M. L. 172.....	199
TIP TOP RUBBER DISTRIBUTORS - INDUSTRIAL DIVISION RE C.J.A. L. 1669.....	219
VICTORIA HOSPITAL BOARD OF TRUSTEES RE GRACE MIEDEMA AND LON- DON AND DISTRICT BUILDING SERVICE WORKERS' UNION, LOCAL 220, S.E.I.U., A.F. OF L., C.I.O., C.L.C.....	276
VOLCANO LIMITED (LIMITEE) RE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL UNION 71.....	221
WERLICH INDUSTRIES LIMITED RE I.W.A.....	214

INDEX OF CASES

ACCREDITATION - PRACTICE - DETERMINATION OF A REPRESENTATIVE WEEKLY PAYROLL PERIOD - REQUIREMENT FOR DETAILS - WHETHER REQUIREMENT SATISFIED - BOARD PRACTICE TO APPOINT AN EXAMINER.

MECHANICAL CONTRACTORS ASSOCIATION HAMILTON v. THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL UNION 67 v. METROPOLITAN HAMILTON HOUSE BUILDERS' ASSOCIATION v. PIPE LINE CONTRACTORS ASSOCIATION OF CANADA.....

238

ARBITRATION - SUCCESSOR RIGHTS - S55(2) - INTERPRETATION OF THE WORDS "UNTIL THE BOARD OTHERWISE DECLARES" - EFFECT ON BARGAINING RIGHTS AND OBLIGATIONS OF A SUCCESSOR EMPLOYER - WHETHER MINISTER ADVISED TO APPOINT AN EMPLOYER NOMINEE TO AN ARBITRATION BOARD - S37(4) - WHETHER AN INTERMINGLING OF EMPLOYEES - WHETHER BOARD SHOULD ORDER A REPRESENTATION VOTE - S55(6)(A) - WHETHER SECTION OPERATES RETROSPECTIVELY OR PROSPECTIVELY.

TORONTO TYPOGRAPHICAL UNION NO. 91 v. THE BRYANT PRESS LIMITED.....

186

BARGAINING RIGHTS - APPLICANT HERETOFORE A PARTY TO A COLLECTIVE AGREEMENT COVERING EMPLOYEES AFFECTED BY THE APPLICATION FOR CERTIFICATION - WHETHER A BOARD CERTIFICATE WILL IMPROVE UPON ESTABLISHED BARGAINING RIGHTS.

THE CANADIAN LABOUR CONGRESS REPRESENTATIVE'S UNION v. THE CANADIAN LABOUR CONGRESS.....

211

BARGAINING RIGHTS - PRACTICE - CONSTRUCTION INDUSTRY - COLLECTIVE AGREEMENT - NEGOTIATED SIX WEEKS AFTER DATE OF APPLICATION - S5(1) - WHETHER A BAR TO AN APPLICATION FOR CERTIFICATION - EFFECT OF A FAILURE OF AN INTERESTED PARTY TO APPEAR AND PARTICIPATE IN THE PROCEEDINGS.

LUMBER AND SAWMILL WORKERS UNION LOCAL 2693 OF THE UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA v. ALGOMA MAINTENANCE & SERVICES LIMITED.....

263

BARGAINING RIGHTS - S1(1)(E) - WHETHER DOCUMENT A COLLECTIVE AGREEMENT - WHETHER ONE OF THE PARTIES A TRADE UNION - S1(1)(N) - WHETHER SIGNATURES OF EMPLOYEES ON DOCUMENT SATISFIES ONUS.

INTERNATIONAL UNION OF DISTRICT 50, ALLIED AND TECHNICAL WORKERS OF THE UNITED STATES AND CANADA v. STAR STEEL LTD.....

272

BARGAINING RIGHTS - S40(A) - INTERPRETATION OF THE WORDS "OTHER SUPPORT" - WHETHER A COLLECTIVE AGREEMENT NEGOTIATED WITH A TRADE UNION SELECTED BY THE EMPLOYER FALLS WITHIN THE MISCHIEF OF THE SECTION - WHETHER A SUBSEQUENT COLLECTIVE AGREEMENT CURES THE DEFECTS INHERENT IN THE INITIAL IMPROPRIETY OF A COLLECTIVE BARGAINING RELATIONSHIP.

LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 v. SUNRISE PAVING & CONSTRUCTION CO. LTD. v. OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, LOCAL 172....

199

BARGAINING UNIT - CONSTRUCTION INDUSTRY - COLLECTIVE AGREEMENT - A COLLECTIVE AGREEMENT WHOSE SCOPE CLAUSE DOES NOT PERTAIN TO THE GEOGRAPHIC AREA SUBJECT TO THE BARGAINING UNIT PROPOSED - WHETHER AGREEMENT AFFECTS STATUS OF THE APPLICANT - WHETHER BARGAINING RIGHTS AFFECTED - THE BOARD DOES NOT DESCRIBE UNITS IN TERMS OF THE NATURE OF THE WORK PERFORMED - WHETHER RESPONDENT ANTICIPATES A JURISDICTIONAL DISPUTE - EFFECT ON THE BOARD'S DESCRIPTION OF THE APPROPRIATE BARGAINING UNIT.

UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA v. CANADIAN MACHINERY MOVERS LIMITED.....

189

BARGAINING UNIT - DETERMINING THE APPROPRIATE GEOGRAPHIC AREA - WHETHER BOARD WILL VARY FROM ITS PAST PRACTICE - EFFECT OF THE AGREEMENT OF THE PARTIES.

RETAIL CLERKS INTERNATIONAL ASSOCIATION v. CANADA SAFE-WAY LIMITED.....

262

BARGAINING UNIT - EFFECT OF BOARD'S PRIOR DECISION IN THE MATTER - AGREEMENT OF THE PARTIES - TRUCK DRIVERS AND MECHANICS INCLUDED IN UNIT COMPOSED OF EMPLOYEES OF RESPONDENT'S WOODS OPERATIONS.

VI

INTERNATIONAL WOODWORKERS OF AMERICA v. J. E. MARTEL & SONS LUMBER LIMITED v. GROUP OF EMPLOYEES.....

191

BARGAINING UNIT - EMPLOYEES - SCHOOL BOARD UNIT - AGREEMENT OF THE PARTIES - OFFICE, CLERICAL, AND TECHNICAL EMPLOYEES - REGULAR AND PART TIME.

THE CANADIAN UNION OF PUBLIC EMPLOYEES v. THE OTTAWA BOARD OF EDUCATION v. NATIONAL ASSOCIATION OF BROADCAST EMPLOYEES AND TECHNICIANS AFL-CIO-CLC v. GROUP OF EMPLOYEES.....

287

BARGAINING UNIT - REPRESENTATION VOTE - EMPLOYEES - DISPUTED PERSONS CHARACTERIZED AS OFFICE EMPLOYEES - WHETHER INCLUDED IN BARGAINING UNIT - WHETHER ELIGIBLE TO VOTE.

CANADIAN MERCHANDISING EMPLOYEES' UNION v. STEINBERG'S LIMITED v. RETAIL AND FOOD EMPLOYEES LOCAL UNION 175, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC v. UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 93 v. RETAIL CLERKS INTERNATIONAL ASSOCIATION v. RETAIL CLERKS UNION, LOCAL NO. 486 CHARTERED BY THE RETAIL CLERKS INTERNATIONAL ASSOCIATION.....

192

BARGAINING UNIT - RETAIL STORES - WHETHER BOARD IS PREPARED TO VARY ITS WELL-ESTABLISHED PRACTICE IN DESCRIBING THE APPROPRIATE BARGAINING UNIT - EFFECT OF PRACTICE CREATING AN IMPEDIMENT TO A SALE OF A BUSINESS - WHETHER SUFFICIENT REASON TO CAUSE BOARD TO VARY.

CANADIAN FOOD AND ALLIED WORKERS LOCAL UNION 175, CHARTERED BY AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC v. M. LOEB (LONDON) LIMITED.....

197

BARGAINING UNIT - WHETHER ALL EMPLOYEES IN PUBLIC RELATIONS DEPARTMENT OF THE RESPONDENT AN APPROPRIATE BARGAINING UNIT.

CANADIAN UNION OF PUBLIC EMPLOYEES v. QUEEN'S UNIVERSITY AT KINGSTON v. GROUP OF EMPLOYEES.....

267

CHARGES - S79 - JURISDICTION - EMPLOYEE - ALLEGED UNFAIR LABOUR PRACTICE COMMITTED WHILE IN ONTARIO ALTHOUGH COMPLAINANT PHYSICALLY EMPLOYED IN QUEBEC - WHETHER BOARD SHOULD ASSERT JURISDICTION - S47(4) - RULES - WHETHER BOARD DEMANDS SAME STANDARD FOR PARTICULARS RELATING TO CHARGES

UNDER UNFAIR LABOUR PRACTICE PROVISIONS OF ACT AS CERTIFICATION APPLICATIONS - WHETHER CONVERSATIONS ADMISSIBLE ALTHOUGH NOT RELATED TO CHARGE IN COMPLAINT - WHETHER PARTY TAKEN BY SURPRISE - WHETHER ADJOURNMENT IN ORDER - WHETHER DISCHARGE CONTRARY TO THE ACT.

WILLIAM WARCHOW, ESQ., BUSINESS MANAGER, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL UNION 586 v. DONALD SERVANT ELECTRIC LIMITED.....

226

COLLECTIVE AGREEMENT - BARGAINING UNIT - CONSTRUCTION INDUSTRY - A COLLECTIVE AGREEMENT WHOSE SCOPE CLAUSE DOES NOT PERTAIN TO THE GEOGRAPHIC AREA SUBJECT TO THE BARGAINING UNIT PROPOSED WHETHER AGREEMENT AFFECTS STATUS OF THE APPLICANT - WHETHER BARGAINING RIGHTS AFFECTED - THE BOARD DOES NOT DESCRIBE UNITS IN TERMS OF THE NATURE OF THE WORK PERFORMED - WHETHER RESPONDENT ANTICIPATES A JURISDICTIONAL DISPUTE - EFFECT ON THE BOARD'S DESCRIPTION OF THE APPROPRIATE BARGAINING UNIT.

UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA v. CANADIAN MACHINERY MOVERS LIMITED.....

189

CONSTITUTIONAL LAW - JURISDICTION - B.N.A. Act - S92 10(c) - WHETHER THE BOARD MAY ASSERT JURISDICTION.

NATIONAL ASSOCIATION OF BROADCAST EMPLOYEES AND TECHNICIANS AFL CIO CLC v. BARRIE CABLE TV LIMITED.....

212

CONSTRUCTION INDUSTRY - COLLECTIVE AGREEMENT - BARGAINING UNIT - A COLLECTIVE AGREEMENT WHOSE SCOPE CLAUSE DOES NOT PERTAIN TO THE GEOGRAPHIC AREA SUBJECT TO THE BARGAINING UNIT PROPOSED - WHETHER AGREEMENT AFFECTS STATUS OF THE APPLICANT - WHETHER BARGAINING RIGHTS AFFECTED - THE BOARD DOES NOT DESCRIBE UNITS IN TERMS OF THE NATURE OF THE WORK PERFORMED - WHETHER RESPONDENT ANTICIPATES A JURISDICTIONAL DISPUTE - EFFECT ON THE BOARD'S DESCRIPTION OF THE APPROPRIATE BARGAINING UNIT.

UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA v. CANADIAN MACHINERY MOVERS LIMITED.....

189

EMPLOYEES-CHARGES - S79 - JURISDICTION - ALLEGED UNFAIR LABOUR PRACTICE COMMITTED WHILE IN ONTARIO ALTHOUGH COMPLAINANT PHYSICALLY EMPLOYED IN QUEBEC - WHETHER BOARD SHOULD ASSERT JURISDICTION - S47(4) - RULES - WHETHER BOARD DEMANDS SAME STANDARD FOR PARTICULARS RELATING TO CHARGES UNDER UNFAIR LABOUR PRACTICE PROVISIONS OF ACT AS CERTIFICATION APPLICATIONS - WHETHER CONVERSATION ADMISSIBLE ALTHOUGH NOT RELATED TO CHARGE IN COMPLAINT - WHETHER PARTY TAKEN BY SURPRISE - WHETHER ADJOURNMENT IN ORDER - WHETHER DISCHARGE CONTRARY TO THE ACT.

WILLIAM WARCHOW, ESQ., BUSINESS MANAGER, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL UNION 586 v. DONALD SERVANT ELECTRIC LIMITED.....	226
EMPLOYEES - REPRESENTATION VOTE - ELIGIBILITY TO VOTE - A COMPOSITE EMPLOYEE - WHETHER OR NOT PERFORMING BARGAINING UNIT FUNCTIONS ON THE DAY VOTE ORDERED.	
INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 v. H.J. MCFARLAND CONSTRUCTION COMPANY LIMITED.....	213
EMPLOYEES - BARGAINING UNIT - SCHOOL BOARD UNIT - AGREEMENT OF THE PARTIES - OFFICE, CLERICAL, AND TECHNICAL EMPLOYEES - REGULAR AND PART TIME.	
THE CANADIAN UNION OF PUBLIC EMPLOYEES v. THE OTTAWA BOARD OF EDUCATION v. NATIONAL ASSOCIATION OF BROADCAST EMPLOYEES AND TECHNICIANS AFL-CIO-CLC v. GROUP OF EMPLOYEES.....	287
EMPLOYEES - CLARIFICATION - S1(3)(B) - THE BOARD'S CONCERN IN DETERMINING THE ISSUE IS NOT WHAT CLASSIFICATION A PERSON HOLDS BUT WHETHER MANAGERIAL FUNCTIONS ARE EXERCISED.	
THE ASSOCIATION OF PROFESSIONAL LIBRARIANS OF THE HAMILTON PUBLIC LIBRARY v. HAMILTON PUBLIC LIBRARY BOARD.....	268
EMPLOYEES - PRACTICE - PERSONS LAID OFF FOR A PERIOD IN EXCESS OF THIRTY DAYS PRIOR TO THE DATE THE APPLICATION WAS MADE - S8(1) - WHETHER ELIGIBLE TO BE INCLUDED IN THE VOTING CONSTITUENCY FOR PURPOSES OF DETERMINING APPLICANT'S MEMBERSHIP POSITION.	
INTERNATIONAL WOODWORKERS OF AMERICA v. WERLICH INDUSTRIES LIMITED.....	214
EMPLOYEES - REPRESENTATION VOTE - BARGAINING UNIT - DISPUTED PERSONS CHARACTERIZED AS OFFICE EMPLOYEES - WHETHER INCLUDED IN BARGAINING UNIT - WHETHER ELIGIBLE TO VOTE.	
CANADIAN MERCHANDISING EMPLOYEES' UNION v. STEINBERG'S LIMITED v. RETAIL AND FOOD EMPLOYEES LOCAL UNION 175, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC v. UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 93 v. RETAIL CLERKS INTERNATIONAL ASSOCIATION v. RETAIL CLERKS UNION, LOCAL NO. 486 CHARTERED BY THE RETAIL CLERKS INTERNATIONAL ASSOCIATION.....	192

EMPLOYEES - S1(3)(b) - "...EMPLOYED IN A CONFIDENTIAL CAPACITY ..."- WHETHER PERSONS WHO MAY OTHERWISE BE DEEMED TO BE EMPLOYED IN A CONFIDENTIAL CAPACITY WHERE SUBJECT MATTER OF CONFIDENTIAL INFORMATION IS DISCLOSED FOR PUBLIC CONSUMPTION CONTINUE TO BE SO EMPLOYED.

CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 167 v. THE CORPORATION OF THE CITY OF HAMILTON..... 223

EVIDENCE - MEMBERSHIP - PRACTICE - CERTIFICATE OF MEMBERSHIP - NEITHER MONTH NOR YEAR INSERTED - VALIDITY - WHETHER A TECHNICAL IRREGULARITY - S48(2) OF RULES - WHETHER BOARD WILL PERMIT ORAL EVIDENCE TO BE ADDUCED.

LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 1089 v. COHEN CONSTRUCTION COMPANY v. GROUP OF EMPLOYEES..... 265

EVIDENCE - PETITION - WITNESSES FAILURE TO RECALL PROPER SEQUENCE OF EVENTS PERTAINING TO CIRCULATION AND ORIGINATION OF A PETITION - WHETHER EXERCISING RECOLLECTION OF ORDINARY WORKMEN - WHETHER A REPRESENTATION VOTE ORDERED.

UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 1190 v. COMET CARPENTERS LTD. v. GROUP OF EMPLOYEES..... 194

FAIR REPRESENTATION - PROCEDURE - SECTION 79 - THE PURPOSE OF THE LEGISLATURE IN ENACTING S60 - THE NATURE OF THE COMPLAINT ALLEGING VIOLATION OF S60 BEFORE THE OLRB - PROCEDURE TO BE FOLLOWED - THE STANDARD OF THE DUTY OF CARE IMPOSED UPON OFFICIALS UNDER S60 - WHETHER RESPONDENT WAS IN BREACH THEREOF - WHETHER AN OBLIGATION OWED NOT ONLY TO EACH INDIVIDUAL MEMBER BUT TO THE BARGAINING UNIT AS A WHOLE.

GEORGE C. BAIRD v. LOCAL 647, INTERNATIONAL BROTHERHOOD OF TEAMSTERS v. RUTHERFORD'S DAIRY LIMITED..... 240

JURISDICTION - CONSTITUTIONAL LAW - B.N.A. ACT - S92 10(c) - WHETHER THE BOARD MAY ASSERT JURISDICTION.

NATIONAL ASSOCIATION OF BROADCAST EMPLOYEES AND TECHNICIANS AFL CIO CLC v. BARRIE CABLE TV LIMITED..... 212

JURISDICTION - EMPLOYEE - CHARGES - S79 - ALLEGED UNFAIR LABOUR PRACTICE COMMITTED WHILE IN ONTARIO ALTHOUGH COMPLAINANT PHYSICALLY EMPLOYED IN QUEBEC - WHETHER BOARD SHOULD ASSERT JURISDICTION - S47(4) - RULES - WHETHER BOARD DEMANDS SAME STANDARD FOR PARTICULARS RELATING TO CHARGES UNDER UNFAIR LABOUR PRACTICE PROVISIONS OF ACT AS CERTIFICATION APPLICATIONS - WHETHER CONVERSATIONS ADMISSIBLE ALTHOUGH NOT RELATED TO CHARGE IN COMPLAINT - WHETHER PARTY TAKEN BY SURPRISE - WHETHER ADJOURNMENT IN ORDER - WHETHER DISCHARGE CONTRARY TO THE ACT.

WILLIAM WARCHOW, ESQ., BUSINESS MANAGER, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL UNION 586 v. DONALD SERVANT ELECTRIC LIMITED.....

226

JURISDICTIONAL DISPUTE - S81(1) - INTERPRETATION - WHETHER APPLICANT "AN INTERESTED PARTY" - THE MANNER IN WHICH A WORK ASSIGNMENT DISPUTE MAY ARISE - WHETHER APPLICANT AN EMPLOYER PARTY TO A WORK ASSIGNMENT DISPUTE.

ELLIS DON LIMITED v. ACME LATHING CO. LTD.; EASTWAY CONTRACTING COMPANY; CARPENTERS' DISTRICT COUNCIL OF TORONTO AND VICINITY, ON BEHALF OF LOCAL UNIONS 27, 666, 681, 1133, 1747, 1963, 3227 AND 3233 OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA; LOCAL 97, WOOD, WIRE AND METAL LATHERS INTERNATIONAL UNION; LOCAL 562, WOOD, WIRE AND METAL LATHERS INTERNATIONAL UNION.....

215

MEMBERSHIP - EVIDENCE - PRACTICE - CERTIFICATE OF MEMBERSHIP - NEITHER MONTH NOR YEAR INSERTED - VALIDITY - WHETHER A TECHNICAL IRREGULARITY - S48(2) OF RULES - WHETHER BOARD WILL PERMIT ORAL EVIDENCE TO BE ADDUCED.

LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 1089 v. COHEN CONSTRUCTION COMPANY v. GROUP OF EMPLOYEES.....

265

MEMBERSHIP EVIDENCE - WHERE APPLICATION IS MADE IN THE NAME OF THE LOCAL THE BOARD WILL NOT ACCEPT EVIDENCE OF MEMBERSHIP FILED IN THE NAME OF THE PARENT - WHETHER PHOTOSTATIC COPIES OF RECEIPTS FOR PAYMENT OF INITIATION FEES ARE ACCEPTABLE - UNDECIDED BY THE BOARD.

UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL UNION 71, v. VOLCANO LIMITED (LIMITEE).....

221

PETITION - EVIDENCE - WITNESSES FAILURE TO RECALL PROPER SEQUENCE OF EVENTS PERTAINING TO CIRCULATION AND ORIGINATION OF A PETITION - WHETHER EXERCISING RECOLLECTION OF ORDINARY WORKMEN - WHETHER A REPRESENTATION VOTE ORDERED.

UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 1190 v. COMET CARPENTERS LTD. v. GROUP OF EMPLOYEES.....

194

PETITION - PRACTICE - FAILURE OF PARTIES TO ATTEND HEARING AT TORONTO - WHETHER FINANCIAL DIFFICULTY AN ACCEPTABLE EXCUSE - FACTORS THE BOARD CONSIDERED.

THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL 2466 v. A AND W CARPENTRY v. GROUP OF EMPLOYEES.....

198

PETITION - PRACTICE - ONUS TO SATISFY THE BOARD OR ORIGINATION AND CIRCULATION OF THE PETITION - EFFECT OF A HIATUS IN THE IDENTIFICATION OF SIGNATORIES TO THE DOCUMENTS - WHETHER ONUS SATISFIED - EFFECT OF FAILURE TO SATISFY ONUS.

INTERNATIONAL MOLDERS & ALLIED WORKERS UNION v. EXTRUDED PLASTIC PRODUCTS LTD. v. GROUP OF EMPLOYEES.....

268

PRACTICE - ACCREDITATION - DETERMINATION OF A REPRESENTATIVE WEEKLY PAYROLL PERIOD - REQUIREMENT FOR DETAILS - WHETHER REQUIREMENT SATISFIED - BOARD PRACTICE TO APPOINT AN EXAMINER.

MECHANICAL CONTRACTORS ASSOCIATION HAMILTON v. THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL UNION 67 v. METROPOLITAN HAMILTON HOUSE BUILDERS' ASSOCIATION v. PIPE LINE CONTRACTORS ASSOCIATION OF CANADA.....

238

PRACTICE - CONSTRUCTION INDUSTRY - BARGAINING RIGHTS - COLLECTION AGREEMENT - NEGOTIATED SIX WEEKS AFTER DATE OF APPLICATION - S5(1) - WHETHER A BAR TO AN APPLICATION FOR CERTIFICATION - EFFECT OF A FAILURE OF AN INTERESTED PARTY TO APPEAR AND PARTICIPATE IN THE PROCEEDINGS.

LUMBER AND SAWMILL WORKERS UNION LOCAL 2693 OF THE UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA v. ALGOMA MAINTENANCE & SERVICES LIMITED.....

263

PRACTICE - CONSTRUCTION INDUSTRY - STATUS TO INTERVENE -
WHETHER INTERVENER HAD MEMBERS WHO WERE EMPLOYEES OF
THE RESPONDENT AS OF THE DATE THE APPLICATION WAS MADE.

LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL
183 v. PERF CONSTRUCTION COMPANY v. OPERATIVE PLASTERERS'
AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED
STATES AND CANADA, LOCAL UNION #172.....

225

PRACTICE - EMPLOYEES - PERSONS LAID OFF FOR A PERIOD IN EX-
CESS OF THIRTY DAYS PRIOR TO THE DATE THE APPLICATION
WAS MADE - S8(1) - WHETHER ELIGIBLE TO BE INCLUDED IN
THE VOTING CONSTITUENCY FOR PURPOSES OF DETERMINING APPLI-
CANT'S MEMBERSHIP POSITION.

INTERNATIONAL WOODWORKERS OF AMERICA, v. WERLICH IN-
DUSTRIES LIMITED.....

214

PRACTICE - MEMBERSHIP - EVIDENCE - CERTIFICATE OF MEMBERSHIP
- NEITHER MONTH NOR YEAR INSERTED - VALIDITY - WHETHER
A TECHNICAL IRREGULARITY - S48(2) OF RULES - WHETHER
BOARD WILL PERMIT ORAL EVIDENCE TO BE ADDUCED.

LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL
1089 v. COHEN CONSTRUCTION COMPANY v. GROUP OF EM-
PLOYEES.....

265

PRACTICE - NON APPEARANCE OF APPLICANT - WHETHER FACT PARTY
WAS SNOW BOUND AN APPROPRIATE EXCUSE - WHETHER BOARD
DISMISSES APPLICATION.

UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA,
LOCAL 2436 v. KINGSWAY BUILDERS v. EMPLOYEE.....

224

PRACTICE - PETITION - FAILURE OF PARTIES TO ATTEND HEARING
AT TORONTO - WHETHER FINANCIAL DIFFICULTY AN ACCEPTABLE
EXCUSE - FACTORS THE BOARD CONSIDERED.

THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMER-
ICA LOCAL 2466 v. A AND W CARPENTRY v. GROUP OF EM-
PLOYEES.....

198

PRACTICE - PETITION - ONUS TO SATISFY THE BOARD OR ORIGINA-
TION AND CIRCULATION OF THE PETITION - EFFECT OF A HIATUS
IN THE IDENTIFICATION OF SIGNATORIES TO THE DOCUMENTS
- WHETHER ONUS SATISFIED - EFFECT OF FAILURE TO SATISFY
ONUS.

INTERNATIONAL MOLDERS & ALLIED WORKERS UNION v. EXTRUDED PLASTIC PRODUCTS LTD. v. GROUP OF EMPLOYEES.....	268
PRACTICE - REPRESENTATION VOTE - OBJECTION TO TRADE UNION'S APPOINTED SCRUTINEER - POLICY OF THE BOARD - WHETHER BOARD PREPARED TO ISSUE A DIRECTION IN THE MATTER OF THE UNION'S APPOINTMENT.	
INTERNATIONAL WOODWORKERS OF AMERICA v. J. E. MARTEL & SONS LUMBER LIMITED v. GROUP OF EMPLOYEES.....	246
PRACTICE - SECTION 79 - TIMELINESS - WHETHER APPLICATION PREMATURE - WHETHER AGGRIEVED PERSONS HAVE EXHAUSTED REMEDIES.	
RETAIL CLERKS INTERNATIONAL ASSOCIATION v. SUNNYBROOK FOOD MARKET (KEELE) LTD.....	210
PRACTICE - WHAT CONSTITUTES PROPER SERVICE OF A SUMMONS - STANDARD THE BOARD APPLIES - S92(2)(A) - CIRCUMSTANCES UNDER WHICH A BENCH WARRANT WILL ISSUE FOR NON-ATTENDANCE - WHETHER BOARD WILL ACCEDE TO REQUEST UNDER THE CIRCUMSTANCES.	
LOCAL UNION 1940 OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA AND GRAND RIVER VALLEY DISTRICT COUNCIL OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA ON BEHALF OF LOCALS UNIONS 498, 949, 1940 AND 2173 v. DIETRICH & KOEHLER CONSTRUCTION LTD., AND D-K CONSTRUCTION LIMITED.....	234
PROCEDURE - SECTION 79 - FAIR REPRESENTATION - THE PURPOSE OF THE LEGISLATURE IN ENACTING S60 - THE NATURE OF THE COMPLAINT ALLEGING VIOLATION OF S60 BEFORE THE OLRB - PROCEDURE TO BE FOLLOWED - THE STANDARD OF THE DUTY OF CARE IMPOSED UPON OFFICIALS UNDER S60 - WHETHER RESPONDENT WAS IN BREACH THEREOF - WHETHER AN OBLIGATION OWED NOT ONLY TO EACH INDIVIDUAL MEMBER BUT TO THE BARGAINING UNIT AS A WHOLE.	
GEORGE C. BAIRD v. LOCAL 647, INTERNATIONAL BROTHERHOOD OF TEAMSTERS v. RUTHERFORD'S DAIRY LIMITED.....	240
RELATED EMPLOYER - S1(4) - ONLY EMPLOYEES AFFECTED BY APPLICATION IN THE EMPLOY OF NAMED RESPONDENT - WHETHER NECESSARY FOR THE BOARD TO CONSIDER APPLICATION OF RELATED EMPLOYER PROVISION.	

UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA,
LOCAL 1669, v. TIP TOP RUBBER DISTRIBUTORS - INDUSTRIAL
DIVISION.....

219

RELIGIOUS OBJECTION - S39 - THE BOARD'S FUNCTION - TO DETER-
MINE WHETHER AN INDIVIDUAL APPLICANT COMES WITHIN THE
MEANING AND INTENTION OF THE STATUTORY EXEMPTION - TEST
THE BOARD APPLIES - WHETHER THE APPLICANT DOES HAVE A
SINCERE RELIGIOUS CONVICTION OR BELIEF - WHETHER APPLI-
CANT DOES NOT OBJECT TO JOINING A NON-SECULAR TRADE UNION -
WHETHER A RELEVANT MATTER - RELEVANCE OF WHETHER APPLICANT'S
APPLICATION SPONSORED BY AN OUTSIDE ORGANIZATION.

ANTHONY J. VIS, v. THE HAMILTON BEVERAGE DISPENSERS
UNION, LOCAL 197 v. SHERATON LIMITED - SHERATON-CON-
NAUGHT HOTEL.....

249

RELIGIOUS OBJECTION - TIMELINESS - S39(2) - "DURING THE LIFE
OF SUCH COLLECTIVE AGREEMENT - INTERPRETATION - WHERE
APPLICATION IS MADE DURING HIATUS OF AN EXPIRED COLLEC-
TIVE AGREEMENT AND A YET TO BE RE NEGOTIATED COLLECTIVE
AGREEMENT - EFFECT - TO DEPRIVE APPLICANT OF REMEDY
UNDER S39(1) - WHETHER INTENTION OF LEGISLATURE - INTER-
PRETATION ACT - R.S.O. 1970 C225 S10 - REMEDIAL NATURE
OF THE L.R.A. - WHETHER COMBINED EFFECT OF THE H.L.D.A.A.
AND S70 OF THE O.L.R.A. PROLONGS THE LIFE OF AN EXPIRED
COLLECTIVE AGREEMENT.

GRACE MIEDEMA v. LONDON AND DISTRICT BUILDING SERVICE
WORKERS' UNION, LOCAL 220, S.E.I.U., A.F. OF L., C.I.O.,
C.L.C. v. VICTORIA HOSPITAL BOARD OF TRUSTEES.....

276

REPRESENTATION VOTE - BARGAINING UNIT - EMPLOYEES - DISPUTED
PERSONS CHARACTERIZED AS OFFICE EMPLOYEES - WHETHER
INCLUDED IN BARGAINING UNIT - WHETHER ELIGIBLE TO VOTE.

CANADIAN MERCHANDISING EMPLOYEES' UNION v. STEINBERG'S
LIMITED v. RETAIL AND FOOD EMPLOYEES LOCAL UNION 175,
AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH
AMERICA, AFL-CIO-CLC v. UNITED BROTHERHOOD OF CARPENTERS
AND JOINERS OF AMERICA, LOCAL UNION 93, v. RETAIL CLERKS
INTERNATIONAL ASSOCIATION v. RETAIL CLERKS UNION, LOCAL
NO. 486 CHARTERED BY THE RETAIL CLERKS INTERNATIONAL
ASSOCIATION.....

192

REPRESENTATION VOTE - EMPLOYEE - ELIGIBILITY TO VOTE - A
COMPOSITE EMPLOYEE - WHETHER OR NOT PERFORMING BARGAIN-
ING UNIT FUNCTIONS ON THE DAY VOTE ORDERED.

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793, v. H. J. McFARLAND CONSTRUCTION COMPANY LIMITED.....	213
--	-----

REPRESENTATION VOTE - PRACTICE - OBJECTION TO TRADE UNION'S
APPOINTED SCRUTINEER - POLICY OF THE BOARD - WHETHER
BOARD PREPARED TO ISSUE A DIRECTION IN THE MATTER OF
THE UNION'S APPOINTMENT.

INTERNATIONAL WOODWORKERS OF AMERICA, v. J. E. MARTEL & SONS LUMBER LIMITED v. GROUP OF EMPLOYEES.....	246
---	-----

SECTION 79 - DISCHARGE FOR UNION ACTIVITIES - S58(A) -
WHETHER EMPLOYEES' FAILURE TO MEET MEDICAL PREREQUISITES
FOR THE PERFORMANCE OF JOB FUNCTION THE CAUSE FOR DIS-
CHARGE.

UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMER- ICA (UE) v. NORTHERN ELECTRIC COMPANY LIMITED.....	205
---	-----

SECTION 79 - JURISDICTION - EMPLOYEE - CHARGES - ALLEGED UN-
FAIR LABOUR PRACTICE COMMITTED WHILE IN ONTARIO ALTHOUGH
COMPLAINANT PHYSICALLY EMPLOYED IN QUEBEC - WHETHER BOARD
SHOULD ASSERT JURISDICTION - S47(4) - RULES - WHETHER
BOARD DEMANDS SAME STANDARD FOR PARTICULARS RELATING TO
CHARGES UNDER UNFAIR LABOUR PRACTICE PROVISIONS OF ACT
AS CERTIFICATION APPLICATIONS - WHETHER CONVERSATIONS
ADMISSIBLE ALTHOUGH NOT RELATED TO CHARGE IN COMPLAINT -
WHETHER PARTY TAKEN BY SURPRISE - WHETHER ADJOURNMENT
IN ORDER - WHETHER DISCHARGE CONTRARY TO THE ACT.

WILLIAM WARCHOW, ESQ., BUSINESS MANAGER, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL UNION 586, v. DONALD SERVANT ELECTRIC LIMITED.....	226
---	-----

SECTION 79 - PRACTICE - COMPLAINANT ALLEGES VIOLATIONS OF
SPECIFIC BUT SEPARATE PROVISIONS OF THE ACT AGAINST
BOTH TRADE UNION AND EMPLOYER RESPECTIVELY - WHETHER
A PRIMA FACIE CASE - S46 OF RULES - WHETHER BOARD WILL
LIST BOTH COMPLAINTS FOR HEARING.

DONALD G. GEBBIE AND J. MICHAEL LONGMOORE v. THE FORD MOTOR COMPANY OF CANADA LIMITED AND LOCAL 200 U.A.W.....	222
---	-----

SECTION 79 - PRACTICE - TIMELINESS - WHETHER APPLICATION
PREMATURE - WHETHER AGGRIEVED PERSONS HAVE EXHAUSTED
REMEDIES.

RETAIL CLERKS INTERNATIONAL ASSOCIATION v. SUNNYBROOK FOOD MARKET (KEELE) LTD.....	210
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SECTION 79 - PROCEDURE - FAIR REPRESENTATION - THE PURPOSE OF THE LEGISLATURE IN ENACTING S60 - THE NATURE OF THE COMPLAINT ALLEGING VIOLATION OF S60 BEFORE THE OLRB - PROCEDURE TO BE FOLLOWED - THE STANDARD OF THE DUTY OF CARE IMPOSED UPON OFFICIALS UNDER S60 - WHETHER RESPONDENT WAS IN BREACH THEREOF - WHETHER AN OBLIGATION OWED NOT ONLY TO EACH INDIVIDUAL MEMBER BUT TO THE BARGAINING UNIT AS A WHOLE.

GEORGE C. BAIRD v. LOCAL 647, INTERNATIONAL BROTHERHOOD OF TEAMSTERS v. RUTHERFORD'S DAIRY LIMITED.....

240

SUCCESSOR RIGHTS - ARBITRATION - S55(2) - INTERPRETATION OF THE WORDS "UNTIL THE BOARD OTHERWISE DECLARES" - EFFECT ON BARGAINING RIGHTS AND OBLIGATIONS OF A SUCCESSOR EMPLOYER - WHETHER MINISTER ADVISED TO APPOINT AN EMPLOYER NOMINEE TO AN ARBITRATION BOARD - S37(4) - WHETHER AN INTERMINGLING OF EMPLOYEES - WHETHER BOARD SHOULD ORDER A REPRESENTATION VOTE - S55(6)(A) - WHETHER SECTION OPERATES RETROSPECTIVELY OR PROSPECTIVELY.

TORONTO TYPOGRAPHICAL UNION NO. 91 v. THE BRYANT PRESS LIMITED.....

186

TRADE UNION - CHANGE OF NAME - S1(1)(N) - AGREEMENT OF PARTIES - WHETHER SAME ORGANIZATION AS PREDECESSOR - WHETHER A TRADE UNION FOR PURPOSES OF THE ACT.

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) v. NORTHERN ELECTRIC COMPANY LIMITED v. CANADIAN UNION OF COMMUNICATION WORKERS v. UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE).....

248

TRADE UNION - S1(1)(N) - WHETHER PERSONS WERE ENTITLED TO HOLD OFFICE UNDER THE CONSTITUTION OF THE ORGANIZATION - WHETHER "AN ORGANIZATION OF EMPLOYEES" AS CONTEMPLATED BY THE ACT - WHETHER A VIABLE ENTITY.

CANADIAN STEELWORKERS UNION OF CANADA v. ATLAS STEELS COMPANY, A DIVISION OF RIO ALGOM MINES LTD. v. UNITED STEELWORKERS OF AMERICA.....

274

15. THIS APPLICATION IS THEREFORE DISMISSED.

16. THE BOARD WILL NOT ENTERTAIN AN APPLICATION FOR CERTIFICATION BY THE APPLICANT WITH RESPECT TO ANY OF THE EMPLOYEES OF THE RESPONDENT IN THE VOTING CONSTITUENCY WITHIN THE PERIOD OF SIX MONTHS FROM THE DATE HEREOF.

17. THE REGISTRAR WILL DESTROY THE BALLOTS CAST IN THE PRE-HEARING REPRESENTATION VOTE TAKEN IN THIS MATTER FOLLOWING THE EXPIRATION OF 30 DAYS FROM THE DATE OF THIS DECISION UNLESS A STATEMENT REQUESTING THAT THE BALLOTS SHOULD NOT BE DESTROYED IS RECEIVED BY THE BOARD FROM ONE OF THE PARTIES BEFORE THE EXPIRATION OF SUCH 30 DAY PERIOD.

1410-71-11: TORONTO TYPOGRAPHICAL UNION No. 91 (TRADE UNION) V. THE BRYANT PRESS LIMITED (EMPLOYER).

BEFORE: O.B. SHIME, VICE-CHAIRMAN, AND BOARD MEMBERS J.D. BELL AND O. HODGES.

APPEARANCES AT THE HEARING: S.T. GOUDGE, P. GILCHRIST AND BALFOUR MACKENZIE FOR THE TRADE UNION; A.P. TARASUK, J. WELD, M. ZALESKI AND J. TAYLOR FOR THE EMPLOYER.

DECISION OF THE BOARD: MARCH 3, 1972.

1. THIS IS AN APPLICATION PURSUANT TO SECTION 96 OF THE LABOUR RELATIONS ACT WHEREIN THE MINISTER OF LABOUR HAS REFERRED TO THE BOARD THE QUESTION OF WHETHER HE HAS THE AUTHORITY TO APPOINT AN EMPLOYER NOMINEE TO AN ARBITRATION BOARD.

2. THE FACTS OF THIS CASE ARE AS FOLLOWS: MCCORQUODALE AND BLADES (PRINTERS) LIMITED (HEREINAFTER REFERRED TO AS MCCORQUODALE AND BLADES) WAS A PARTY TO A COLLECTIVE AGREEMENT WITH THE TORONTO TYPOGRAPHICAL UNION No. 91 (HEREINAFTER REFERRED TO AS LOCAL 91). THE BRYANT PRESS LIMITED (HEREINAFTER REFERRED TO AS BRYANT), THE EMPLOYER IN THIS MATTER, ADMITTED THAT IT HAD PURCHASED THE BUSINESS OF MCCORQUODALE AND BLADES AND ADVISED THAT THE TRANSACTION WAS CLOSED ON MARCH 15, 1971. BRYANT ADMITTED THAT THE TRANSACTION CONSTITUTED A SALE OF THE BUSINESS WITHIN THE MEANING OF SECTION 55 OF THE LABOUR RELATIONS ACT.

3. PRIOR TO THE SALE BRYANT'S EMPLOYEES WERE NOT REPRESENTED BY A TRADE UNION BUT SUBSEQUENT TO THE SALE BRYANT'S EMPLOYEES WERE INTERMINGLED WITH THE EMPLOYEES WHO HAD BEEN FORMERLY EMPLOYED BY MCCORQUODALE AND BLADES AND WHO HAD BEEN COVERED BY ITS COLLECTIVE AGREEMENT WITH LOCAL 91.

4. ON NOVEMBER 15, 1971, LOCAL 91 LODGED A GRIEVANCE AGAINST BRYANT UNDER THE TERMS OF THE COLLECTIVE AGREEMENT AND BRYANT RESISTED THE GRIEVANCE ON THE BASIS THAT THERE WAS NOT A SALE AND IT WAS THEREFORE NOT A SUCCESSOR EMPLOYER WITHIN THE MEANING OF SECTION 55 OF THE LABOUR RELATIONS ACT AND ACCORDINGLY WAS NOT BOUND BY THE COLLECTIVE AGREEMENT. AT THE OPENING OF THE HEARING BRYANT FOR THE FIRST TIME ADMITTED A SALE HAD TAKEN PLACE BUT REQUESTED THE BOARD TO HOLD A REPRESENTATION VOTE.

5. THERE IS NO DISPUTE THAT SECTION 55 OF THE LABOUR RELATIONS ACT DEALING WITH SUCCESSOR RIGHTS IS APPLICABLE TO THIS SITUATION. THE RELEVANT PROVISIONS OF THAT SECTION ARE AS FOLLOWS:

55.-(2) WHERE AN EMPLOYER WHO IS BOUND BY OR IS A PARTY TO A COLLECTIVE AGREEMENT WITH A TRADE UNION OR COUNCIL OF TRADE UNIONS SELLS HIS BUSINESS, THE PERSON TO WHOM THE BUSINESS HAS BEEN SOLD IS, UNTIL THE BOARD OTHERWISE DECLARES, BOUND BY THE COLLECTIVE AGREEMENT AS IF HE HAD BEEN A PARTY THERETO AND, WHERE AN EMPLOYER SELLS HIS BUSINESS WHILE AN APPLICATION FOR CERTIFICATION OR TERMINATION OF BARGAINING RIGHTS TO WHICH HE IS A PARTY IS BEFORE THE BOARD, THE PERSON TO WHOM THE BUSINESS HAS BEEN SOLD IS, UNTIL THE BOARD OTHERWISE DECLARES, THE EMPLOYER FOR THE PURPOSES OF THE APPLICATION AS IF HE WERE NAMED AS THE EMPLOYER IN THE APPLICATION.

(6) NOTWITHSTANDING SUBSECTION 2 AND 3, WHERE A BUSINESS WAS SOLD TO A PERSON WHO CARRIES ON ONE OR MORE OTHER BUSINESSES AND A TRADE UNION OR COUNCIL OF TRADE UNIONS IS THE BARGAINING AGENT OF THE EMPLOYEES IN ANY OF THE BUSINESSES AND SUCH PERSON INTERMINGLES THE EMPLOYEES OF ONE OF THE BUSINESSES WITH THOSE OF ANOTHER OF THE BUSINESSES, THE BOARD MAY, UPON THE APPLICATION OF ANY PERSON, TRADE UNION OR COUNCIL OF TRADE UNIONS CONCERNED,

(A) DECLARE THAT THE PERSON TO WHOM THE BUSINESS WAS SOLD IS NO LONGER BOUND BY THE COLLECTIVE AGREEMENT REFERRED TO IN SUBSECTION 2.

6. ADMITTEDLY, BRYANT IS A PERSON "TO WHOM THE BUSINESS HAS BEEN SOLD" WITHIN THE MEANING OF SECTION 55(2) OF THE ACT AND ACCORDINGLY IS BOUND BY THE COLLECTIVE AGREEMENT BETWEEN MCCORQUODALE AND BLADES AND LOCAL 91 "AS IF HE HAD BEEN A PARTY THERETO". BRYANT WAS A PARTY AND CONTINUES TO BE A PARTY "UNTIL THE BOARD OTHERWISE DECLARES". WHEN THE GRIEVANCE AROSE SINCE THE BOARD HAD NOT OTHERWISE DECLARED BOTH LOCAL 91 AND BRYANT WERE ENTITLED TO RELY ON ALL PROVISIONS OF THE COLLECTIVE AGREEMENT INCLUDING THE ARBITRATION PROVISION.

7. BRYANT SUBMITS THAT BEFORE ANSWERING THE QUESTION FROM THE MINISTER THAT THE BOARD HOLD A REPRESENTATION VOTE PURSUANT TO SECTION 96 OF THE LABOUR RELATIONS ACT. THAT SECTION PROVIDES AS FOLLOWS:

96.-(1) WHERE A REQUEST IS MADE UNDER SECTION 15 OR SUBSECTION 4 OF SECTION 37, THE MINISTER MAY REFER TO THE BOARD ANY QUESTION THAT ARISES THAT IN HIS OPINION RELATES TO HIS AUTHORITY TO MAKE AN APPOINTMENT UNDER ANY SUCH PROVISION THAT IS MENTIONED IN THE REFERENCE, AND THE BOARD SHALL REPORT TO THE MINISTER ITS DECISION ON THE QUESTION.

(2) WHERE A QUESTION REFERRED UNDER SUBSECTION 1 INVOLVES AN ISSUE AS TO WHETHER ONE TRADE UNION IS THE SUCCESSOR OF ANOTHER TRADE UNION OR WHETHER A BUSINESS HAS BEEN SOLD BY ONE EMPLOYER TO ANOTHER OR WHERE SUCH QUESTION INVOLVES AN ISSUE UNDER SUBSECTION 11 OF SECTION 55, THE BOARD HAS THE SAME POWERS AND AUTHORITY AS IT HAS UNDER SECTION 54 OR 55, AS THE CASE MAY BE, AS IF AN APPLICATION HAD BEEN MADE THEREUNDER, AND THE BOARD MAY ISSUE EACH DIRECTIONS AS TO THE CONDUCT OF THE PROCEEDINGS AS IT CONSIDERS ADVISABLE.

8. PURSUANT TO SECTION 96 OF THE ACT THE BOARD HAS THE SAME POWERS AS IT HAS UNDER SECTION 55 WHICH INCLUDES THE HOLDING OF A REPRESENTATION VOTE. BUT, THE HOLDING OF A REPRESENTATION VOTE AND A DECLARATION PURSUANT TO SECTION 55(6)(A) OPERATES PROSPECTIVELY FROM THE TIME THAT THE DECLARATION IS MADE. SUCH A DECLARATION DOES NOT HAVE A RETROSPECTIVE AFFECT. ACCORDINGLY, AT THE TIME OF THE GRIEVANCE IN THIS MATTER AND TO THIS DATE THE COLLECTIVE AGREEMENT WAS BINDING SO THAT THE MINISTER DOES HAVE THE POWER TO APPOINT A NOMINEE TO THE BOARD OF ARBITRATION FOR THE PURPOSE OF THE INSTANT GRIEVANCE. AS WE ARE NOW ABLE TO ANSWER THE QUESTION REFERRED TO US BY THE MINISTER IN THE AFFIRMATIVE IT IS REDUNDANT TO CONDUCT A REPRESENTATION VOTE TO ANSWER THE QUESTION BY THE MINISTER AND ACCORD-

INGLY THE REQUEST BY BRYANT IS DENIED. IF BRYANT DESIRES TO RESOLVE THE QUESTION OF REPRESENTATION AND THE QUESTION AS TO WHETHER THE COLLECTIVE AGREEMENT IS BINDING IT MAY BRING AN APPLICATION PURSUANT TO SECTION 55 OF THE ACT.

9. IN THE RESULT WE RESPECTFULLY REPORT TO THE MINISTER THAT HE HAS THE AUTHORITY TO APPOINT AN EMPLOYER NOMINEE TO AN ARBITRATION BOARD.

1660-71-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) v. CANADIAN MACHINERY MOVERS LIMITED (RESPONDENT).

BEFORE: R. A. FURNESS, VICE-CHAIRMAN AND BOARD MEMBERS H. J. F. ADE AND E. BOYER.

DECISION OF THE BOARD: MARCH 6, 1972.

1. IN THIS APPLICATION FOR CERTIFICATION THE APPLICANT FILED ONE CERTIFICATE OF MEMBERSHIP. THE CERTIFICATE IS SIGNED BY THE MEMBER AND INDICATES THAT MONTHLY DUES OF \$16.00 HAVE BEEN PAID FOR AT LEAST ONE MONTH WITHIN THE SIX MONTH PERIOD IMMEDIATELY PRECEDING THE TERMINAL DATE OF THE APPLICATION. THE CERTIFICATE IS CHECKED AND CERTIFIED CORRECT BY AN OFFICER OF THE APPLICANT. THE APPLICANT ALSO FILED ONE COMBINATION APPLICATION FOR MEMBERSHIP AND RECEIPT. THE COMBINATION APPLICATION FOR MEMBERSHIP IS SIGNED BY THE EMPLOYEE AND IS COUNTERSIGNED AND INDICATES THAT AT LEAST \$1.00 HAS BEEN PAID WITHIN THE SIX MONTH PERIOD IMMEDIATELY PRECEDING THE TERMINAL DATE OF THE APPLICATION. THE MONEY WAS COLLECTED BY ONE PERSON. THE APPLICANT ALSO FILED A DULY COMPLETED FORM 54, DECLARATION CONCERNING MEMBERSHIP DOCUMENTS, CONSTRUCTION INDUSTRY.

2. THE RESPONDENT FAILED TO FILE A REPLY, A LIST OF EMPLOYEES AND SPECIMEN SIGNATURES WITHIN THE TIME FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

3. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(N) OF THE LABOUR RELATIONS ACT.

4. THE BOARD FURTHER FINDS THAT THIS IS AN APPLICATION FOR CERTIFICATION WITHIN THE MEANING OF SECTION 108 OF THE LABOUR RELATIONS ACT.

5. THE RESPONDENT FILED A LETTER WITH THE BOARD, A COPY OF AN ALLEGED COLLECTIVE AGREEMENT BETWEEN THE ONTARIO ERECTORS ASSOCIATION AND THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL UNIONS 700, 721, 736, 765, 786 AND A SIGNED UNDATED

AGREEMENT BETWEEN THE RESPONDENT AND INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS - LOCAL 700. THE RESPONDENT HAS MADE CERTAIN REPRESENTATIONS TO THE BOARD IN CONNECTION WITH ITS PRACTICE OF HEARING IRONWORKER RIGGERS TO PERFORM ITS WORK. HOWEVER, THE ALLEGED COLLECTIVE AGREEMENT AND THE SIGNED UNDATED AGREEMENT REFERRED TO ABOVE PURPORT, AT MOST, TO BE WITH REFERENCE TO THE COUNTIES OF ELGIN, ESSEX, KENT, LAMBTON AND MIDDLESEX IN THE PROVINCE OF ONTARIO. THE JOB SITE AFFECTED BY THIS APPLICATION IS AT PARRY SOUND.

6. IT APPEARS TO THE BOARD ON THE BASIS OF ALL OF THE EVIDENCE BEFORE IT THAT THE ALLEGED COLLECTIVE AGREEMENT AND THE SIGNED UNDATED AGREEMENT REFERRED TO IN PARAGRAPH FIVE, DO NOT ESTABLISH BARGAINING RIGHTS BETWEEN THE RESPONDENT AND THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL UNIONS 700, 721, 736, 765, 786 WITH RESPECT TO ANY PORTION OF THE DISTRICT OF PARRY SOUND. WHATEVER MAY BE THE HIRING PRACTICE OF THE RESPONDENT, THE BOARD NOTES THAT THE RESPONDENT HAS NOT DENIED THAT IT HAD MILLWRIGHTS IN ITS EMPLOY AT THE JOB AT PARRY SOUND ON FEBRUARY 24, 1972, THE DATE OF THE MAKING OF THIS APPLICATION FOR CERTIFICATION. IT MAY WELL BE THAT THE RESPONDENT ANTICIPATES A JURISDICTIONAL DISPUTE BETWEEN THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL UNIONS 700, 721, 736, 765, 786 AND THE APPLICANT HEREIN. HOWEVER, IT IS NOT THE PRACTICE OF THE BOARD IN APPLICATIONS FOR CERTIFICATION TO ANTICIPATE THE PROBLEMS WHICH THE RESPONDENT MAY WELL ENVISAGE. IT IS NOT THE USUAL PRACTICE OF THE BOARD TO DEFINE BARGAINING UNITS IN TERMS OF THE NATURE OF THE WORK PERFORMED.

7. THE BOARD FURTHER FINDS THAT ALL MILLWRIGHTS AND MILLWRIGHTS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE TOWNSHIPS OF HARRISON, BURTON, SHAWANGAGA, BURPEE, CARLING, FERGUSON, McDOUGALL COWPER, FOLEY AND CONGER IN THE DISTRICT OF PARRY SOUND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

8. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN SIXTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON MARCH 3, 1972, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 92(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

9. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

1287-71-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) V. J. E. MARTEL & SONS LUMBER LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: FRANK V. BOSCARIOL, VICE-CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND E. BOYER.

DECISION OF THE BOARD: MARCH 7, 1972.

1. PURSUANT TO THE DECISION OF THE BOARD DATED FEBRUARY 9, 1972, THE BOARD FOUND THAT ALL EMPLOYEES OF THE RESPONDENT IN ITS WOODS OPERATIONS IN THE TOWNSHIP OF PATTINSON AND THOSE TOWNSHIPS IMMEDIATELY ADJACENT THERETO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, SCALERS, OFFICE AND SALES STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING, HEREINAFTER REFERRED TO AS BARGAINING UNIT #1.

2. FOR THE PURPOSES OF CLARITY AND HAVING REGARD TO THE SPECIAL CIRCUMSTANCES OF THIS CASE, THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT THE TRUCK DRIVERS AND THE MACHINICS ARE INCLUDED IN BARGAINING UNIT #1.

3. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT NOT LESS THAN THIRTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN BARGAINING UNIT #1, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON DECEMBER 1, 1971, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 92(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

4. A REPRESENTATIVE VOTE WILL BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN BARGAINING UNIT #1. ALL EMPLOYEES OF THE RESPONDENT IN BARGAINING UNIT #1 ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

5. PURSUANT TO THE SAID DECISION OF THE BOARD DATED FEBRUARY 9, 1972, THE BOARD FURTHER FOUND THAT ALL EMPLOYEES OF THE RESPONDENT IN ITS MILL OPERATIONS AT CHAPLEAU, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, SCALERS, OFFICE AND SALES STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING, HEREINAFTER REFERRED TO AS BARGAINING UNIT #2.

6. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE

IT THAT NOT LESS THAN THIRTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN BARGAINING UNIT #2, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON DECEMBER 1, 1971, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 92(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

7. A REPRESENTATION VOTE WILL BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN BARGAINING UNIT #2. ALL EMPLOYEES OF THE RESPONDENT IN BARGAINING UNIT #2 ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

8. VOTERS IN BOTH OF THE ABOVE DEFINED BARGAINING UNITS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BE REPRESENTED BY THE APPLICANT IN THEIR EMPLOYMENT RELATIONS WITH THE RESPONDENT.

9. THE BOARD FURTHER NOTES THE AGREEMENT OF THE PARTIES TO WITHDRAW THEIR RESPECTIVE CHARGES ORIGINALLY FILED IN THIS MATTER.

10. THE MATTER IS REFERRED TO THE REGISTRAR.

598-71-R: CANADIAN MERCHANDISING EMPLOYEES' UNION (APPLICANT) v. STEINBERG'S LIMITED (RESPONDENT) v. RETAIL AND FOOD EMPLOYEES LOCAL UNION 175, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (INTERVENER #1) v. UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 93 (INTERVENER #2) v. RETAIL CLERKS INTERNATIONAL ASSOCIATION (INTERVENER #3) v. RETAIL CLERKS UNION, LOCAL NO. 486 CHARTERED BY THE RETAIL CLERKS INTERNATIONAL ASSOCIATION (INTERVENER #4).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS O. HODGES AND W. H. WIGHTMAN.

DECISION OF J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBER W. H. WIGHTMAN: MARCH 7, 1972.

1. BY ITS DECISION DATED JANUARY 31, 1972, THE BOARD AUTHORIZED MR. H. C. DRAPER, EXAMINER, TO INQUIRE INTO AND REPORT TO THE BOARD ON THE LIST CONTAINING THE NAMES OF THE EMPLOYEES OF THE RESPONDENT FILED WITH THE BOARD IN CONNECTION WITH THIS APPLICATION.

2. PURSUANT TO HIS APPOINTMENT, MR. DRAPER EXAMINED THE RECORDS OF THE RESPONDENT AND CONVENED A MEETING OF THE PARTIES IN OTTAWA ON FEBRUARY 29, 1972. THE PARTIES AGREED TO ACCEPT THE LIST OF EMPLOYEES

SUBMITTED BY THE RESPONDENT AS AMENDED BY THE REMOVAL OF 30 NAMES FROM THE LIST AND THE ADDITION OF 5 NAMES TO THE LIST.

3. THE APPLICANT CHALLENGED THE INCLUSION ON THE LIST OF M. MCKIMM AND J. TAYLOR ON THE GROUNDS THAT THEY PERFORM OFFICE FUNCTIONS. THE PARTIES AGREED THAT THE REPORT OF THE EXAMINER DATED MAY 17, 1971, WHICH FORMS A PART OF A PRIOR APPLICATION FOR CERTIFICATION MADE BY THE APPLICANT FOR THE SAME UNIT OF EMPLOYEES OF THE RESPONDENT (STEINBERG'S LIMITED, BOARD FILE NO. 18979-70-R), AND WHICH DEALS WITH THE DUTIES AND RESPONSIBILITIES OF MRS. MCKIMM AND MISS TAYLOR, SHOULD FORM A PART OF THE INSTANT APPLICATION FOR THE PURPOSE OF DETERMINING WHETHER THEY ARE OFFICE STAFF. THE PARTIES FURTHER AGREED THAT CERTAIN SUPPLEMENTARY EVIDENCE WHICH IS CONTAINED IN A MEMORANDUM FROM MR. DRAPER TO THE BOARD DATED MARCH 2, 1972 SHOULD BE INCLUDED IN AND FORM A PART OF THE SAID REPORT.

4. BASED ON THE EVIDENCE CONTAINED IN THE ABOVE REFERRED TO REPORT OF THE EXAMINER, THE BOARD FINDS THAT M. MCKIMM AND J. TAYLOR ARE MEMBERS OF THE OFFICE STAFF OF THE RESPONDENT AND ACCORDINGLY ARE NOT INCLUDED IN THE BARGAINING UNIT FOUND TO BE APPROPRIATE IN PARAGRAPH 11 OF THE BOARD'S DECISION IN THIS MATTER DATED JANUARY 31, 1972. WE WOULD MENTION THAT ALTHOUGH THE PARTIES IN THE SUPPLEMENTARY EVIDENCE TO THE REPORT AGREED THAT MRS. MCKIMM AND MISS TAYLOR PAID DUES UNDER AN AGREEMENT DATED NOVEMBER 10, 1969 AND WERE COVERED BY THE SAID AGREEMENT, THE BOARD IN PARAGRAPH 10 OF ITS DECISION OF JANUARY 31, 1972 FOUND THAT THE SAID AGREEMENT WAS NOT A COLLECTIVE AGREEMENT WITHIN THE MEANING OF THE ACT

5. THERE ARE 256 EMPLOYEES OF THE RESPONDENT ON THE REVISED LIST OF EMPLOYEES WHO ARE INCLUDED IN THE BARGAINING UNIT FOR PURPOSES OF THE COUNT. THE APPLICANT HAS FILED EVIDENCE OF MEMBERSHIP IN THE CANADIAN MERCHANDISING EMPLOYEES' UNION FOR 92 PERSONS WHOSE NAMES CORRESPOND TO THOSE APPEARING ON THE REVISED LIST. THE BOARD ACCORDINGLY IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT NOT LESS THAN THIRTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON JUNE 30, 1971, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 92 (2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

6. A REPRESENTATION VOTE WILL BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT FOUND TO BE APPROPRIATE IN PARAGRAPH 11 OF THE BOARD'S DECISION OF JANUARY 31, 1972. ALL EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYEMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

7. VOTERS WILL BE GIVEN A CHOICE BETWEEN THE APPLICANT AND THE NEW RETAIL CLERKS INTERNATIONAL ASSOCIATION, LOCAL 486.

8. THE MATTER IS REFERRED TO THE REGISTRAR.

DECISION OF BOARD MEMBER O. HODGES: MARCH 7, 1972.

1. I CONCUR WITH THE FINDINGS OF THE MAJORITY.

2. WHETHER THE EMPLOYEES MCKIMM AND TAYLOR ARE EMPLOYEES PROPERLY TO BE INCLUDED IN THIS UNIT IS A MATTER OF EVIDENCE RELATING TO THEIR DUTIES AND RESPONSIBILITIES. THE PARTIES AGREED TO THE ASSESSMENT OF THAT MATTER BY THE BOARD, BASED ON THE EXAMINER'S REPORT IN FILE 18979-70-R. ON THAT EVIDENCE I FIND THESE TWO EMPLOYEES WOULD BE MORE PROPERLY CLASSIFIED AS OFFICE STAFF, AND I THEREFORE EXCLUDE THEM FROM THIS UNIT ON THAT GROUND.

840-71-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 1190 (APPLICANT) V. COMET CARPENTERS LTD. (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: R.A. FURNESS, VICE CHAIRMAN AND BOARD MEMBERS E. BOYER AND F.W. MURRAY.

APPEARANCES AT THE HEARING: T.E. ARMSTRONG AND J. DYCK FOR THE APPLICANT; MENDEL GREEN FOR THE RESPONDENT; PARGAT SINGH CHAGGER, ELIO CHIAROT, GUS KALOUTAS, GRAZIOSI DOMENICO AND GRAZIANO TROUVANT FOR THE GROUP OF EMPLOYEES.

DECISION OF R.A. FURNESS, VICE CHAIRMAN AND BOARD MEMBER F.W. MURRAY. MARCH 7, 1972.

1. WE FIND THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(N) OF THE LABOUR RELATIONS ACT.

2. WE FURTHER FIND THAT THIS IS AN APPLICATION FOR CERTIFICATION WITHIN THE MEANING OF SECTION 108 OF THE LABOUR RELATIONS ACT.

3. WE FURTHER FIND THAT ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

4. FOUR STATEMENTS OF DESIRE IN OPPOSITION TO THIS APPLICATION FOR CERTIFICATION CONTAINING THE SIGNATURES OF FIVE OF THE EMPLOYEES OF THE RESPONDENT WERE FILED IN THIS MATTER. ALL OF THE PERSONS WHOSE SIGNATURES APPEAR ON THE STATEMENTS OF DESIRE HAD ALSO SIGNED APPLICATIONS FOR MEMBERSHIP IN THE APPLICANT. IT WAS ACCORDINGLY NECESSARY FOR THE BOARD TO INQUIRE INTO THE ORIGATION, PREPARATION AND CIRCULATION OF THESE STATEMENTS OF DESIRE.

5. THE APPLICANT FILED ALLEGATIONS OF IMPROPER OR IRREGULAR CONDUCT IN CONNECTION WITH THE STATEMENTS OF DESIRE FILED IN THIS MATTER. THE APPLICANT ALLEGED THAT THE EMPLOYEES AFFECTED BY THIS APPLICATION WERE ASKED TO SIGN THE STATEMENTS OF DESIRE BY THE OWNER OF THE RESPONDENT, J. PALLADINO, WHEN THEY WERE HANDED THEIR PAY.

6. PARGAT SINGH CHAGGER GAVE EVIDENCE BEFORE THE BOARD CONCERNING THE ORIGATION, PREPARATION AND CIRCULATION OF THE STATEMENTS OF DESIRE FILED IN THIS MATTER. HE TESTIFIED THAT THE EMPLOYEES HELD A MEETING DURING THEIR LUNCH BREAK AND THAT THEY DISCUSSED THE UNION AND DECIDED THAT THEY DID NOT WANT TO JOIN THE UNION. HE FURTHER GAVE EVIDENCE THAT NONE OF THE EMPLOYEES INCLUDING HIMSELF COULD WRITE ENGLISH AND THAT THE OTHER EMPLOYEES ASKED HIM TO ARRANGE THEIR OPPOSITION TO THE UNION. THE WITNESS INFORMED THE BOARD THAT HE SOUGHT THE ASSISTANCE OF A FRIEND, WHO WAS APPARENTLY A MAN OF GREATER EDUCATION THAN HIMSELF, AND THAT THIS FRIEND PREPARED THE HEADINGS TO THE DOCUMENTS WHICH WERE FILED IN OPPOSITION TO THIS APPLICATION FOR CERTIFICATION. PARGAT CHAGGER SINGH FURTHER TESTIFIED THAT HIS FRIEND WAS NOT IN ANY WAY CONNECTED WITH THE RESPONDENT AND THAT THE DOCUMENTS FILED IN OPPOSITION TO THIS APPLICATION WERE SIGNED ON AUGUST 20, 1971 DURING THE LUNCH BREAK. HE ALSO TESTIFIED THAT HE MAILED THE DOCUMENTS TO THE BOARD HIMSELF.

7. THE APPLICANT DID NOT ADDUCE ANY EVIDENCE IN CONNECTION WITH ITS ALLEGATIONS OF IMPROPER OR IRREGULAR CONDUCT IN THIS MATTER BUT SOUGHT TO ATTACK THE CREDIBILITY OF PARGAT SINGH CHAGGER'S EVIDENCE CONCERNING THE TIME DURING WHICH THE STATEMENTS IN OPPOSITION TO THIS APPLICATION WERE SIGNED. THE APPLICANT ALSO CHALLENGED THE HANDWRITING ON THE DOCUMENTS FILED IN THIS MATTER BUT DID NOT ADDUCE ANY EVIDENCE AT THIS POINT ALTHOUGH GIVEN AN OPPORTUNITY TO DO SO.

8. THE APPLICANT CALLED ELIO CHIAROT, JOHN DYCK, GUS KALOUTAS, TROUVANT GRAZIANO AND DOMENICO GRAZIOSI AS WITNESSES BEFORE THE BOARD.

9. THE APPLICANT QUESTIONED ITS WITNESSES WITH RESPECT TO THE SEQUENCE OF EVENTS CONCERNING THE ORIGATION PREPARATION AND CIRCULATION OF THE STATEMENTS OF DESIRE FILED IN THIS MATTER. THERE IS NO DOUBT THAT THERE WERE CERTAIN DIFFERENCES IN THE TESTIMONY GIVEN BY THESE WITNESSES. HOWEVER, ALL OF THE WITNESSES WITH THE EXCEPTION OF

DYCK GAVE EVIDENCE THROUGH AN INTERPRETER, AND, IT APPEARS TO US, THAT THE DIFFERENCES IN THEIR EVIDENCE REGARDING THE PRECISE TIME, PLACE AND SURROUNDINGS CONCERNING THEIR SIGNING OF THE STATEMENTS OF DESIRE IN THIS MATTER WERE THE RESULT OF THE LAPSE OF FIVE MONTHS BETWEEN THE DATE WHEN THESE STATEMENTS OF DESIRE WERE SIGNED AND THE DATE WHEN THEY GAVE THEIR EVIDENCE BEFORE THE BOARD, AND, TO AN IMPRECISION IN THINKING BY THESE WITNESSES. IN OUR OPINION, THE EVIDENCE OF CHIAROT, KALOUTAS, GRAZIANO AND GRAZIOSI WAS THE RECOLLECTION OF ORDINARY WORKING MEN WHO CLEARLY COULD NOT RECALL PRECISELY THE SEQUENCE OF EVENTS REFERRED TO EARLIER.

10. NOTWITHSTANDING CERTAIN DISCREPANCIES IN THE TESTIMONY OF THE WITNESSES WHO WERE CALLED BY THE APPLICANT, WE ARE SATISFIED THAT THE STATEMENTS OF DESIRE FILED IN OPPOSITION TO THIS APPLICATION FOR CERTIFICATION REPRESENT THE TRUE AND VOLUNTARY WISHES OF THE EMPLOYEES AFFECTED BY THIS APPLICATION FOR CERTIFICATION. ACCORDINGLY, IN ALL OF THE CIRCUMSTANCES, WE DESIRE THE CONFIRMATORY EVIDENCE OF A REPRESENTATION VOTE IN THIS MATTER.

11. WE ARE SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE US THAT NOT LESS THAN THIRTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON AUGUST 26, 1971, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 92(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

12. A REPRESENTATION VOTE WILL BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT. ALL EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

13. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BE REPRESENTED BY THE APPLICANT IN THEIR EMPLOYMENT RELATIONS WITH THE RESPONDENT.

14. THE MATTER IS REFERRED TO THE REGISTRAR.

DECISION OF BOARD MEMBER E. BOYER: MARCH 7, 1972.

I DISSENT FROM THE DECISION OF THE MAJORITY RESPECTING THE WEIGHT TO BE GIVEN TO THE STATEMENTS OF DESIRE FILED IN THIS MATTER. HAVING REGARD TO THE EVIDENCE BEFORE THE BOARD AND TO THE REPRESENTATIONS OF THE PARTIES I WOULD HAVE FOUND THAT THE STATEMENTS OF DESIRE FILED IN THIS MATTER DID NOT CAST DOUBT ON THE EVIDENCE OF MEMBERSHIP

FILED BY THE APPLICANT. ACCORDINGLY, I WOULD HAVE GRANTED CERTIFICATION TO THE APPLICANT AND WOULD NOT HAVE DIRECTED A REPRESENTATION VOTE.

1589-71-R: CANADIAN FOOD AND ALLIED WORKERS LOCAL UNION 175, CHARTERED BY AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL - CIO - CLC (APPLICANT) v. M. LOEB (LONDON) LIMITED (RESPONDENT).

BEFORE: FRANK V. BOSCARIOL, VICE-CHAIRMAN, AND BOARD MEMBERS O. HODGES AND H. ADE.

APPEARANCES AT THE HEARING: L. VICTOR PATHE FOR THE APPLICANT; PETER S. MCTAIT FOR THE RESPONDENT.

DECISION OF THE BOARD: MARCH 7, 1972.

1. THE NAME "M. LOEB (LONDON) LIMITED, IGA FOODLINER" APPEARING IN THE STYLE OF CAUSE OF THIS APPLICATION AS THE NAME OF THE RESPONDENT IS AMENDED TO READ: "M. LOEB (LONDON) LIMITED."
2. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(N) OF THE LABOUR RELATIONS ACT.
3. IN THIS APPLICATION FOR CERTIFICATION, THE RESPONDENT SEEKS TO LIMIT THE BARGAINING UNIT TO ALL OF ITS EMPLOYEES "AT ITS RETAIL STORE" AT KINGSVILLE. AT THE HEARING OF THIS MATTER ON MARCH 1, 1972, IT WAS SUBMITTED THAT THE BOARD PRACTICE, IN RETAIL CERTIFICATION CASES, OF CERTIFYING A UNIT OF EMPLOYEES "AT ITS RETAIL STORES", HAS IN THE RESPONDENT'S EXPERIENCE, CREATED AN ADDITIONAL PROBLEM FOR IT IN THE SITUATION WHERE IT IS REQUIRED, PURSUANT TO THE TERMS OF ITS IGA FRANCHISE AGREEMENT, TO OPERATE THE BUSINESS OF A DEFAULTING INDEPENDENT OWNER PENDING THE SALE OF SUCH BUSINESS TO ANOTHER INDEPENDENT OWNER.
4. IN OUR OPINION, THE FACT THAT THE BOARD'S DESCRIPTION OF THE BARGAINING UNIT MAY CREATE AN IMPEDIMENT IN THE SALE OF THE BUSINESS IN THE ABOVE CIRCUMSTANCES, IS NOT SUFFICIENT REASON TO VARY FROM THE BOARD'S WELL-ESTABLISHED PRACTICE IN THIS REGARD.
5. THE BOARD ACCORDINGLY FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT ITS RETAIL STORES IN KINGSVILLE, SAVE AND EXCEPT MEAT DEPARTMENT EMPLOYEES, STORE MANAGER, PERSONS ABOVE THE RANK OF STORE MANAGER, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.
6. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN SIXTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT

IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON FEBRUARY 22, 1972, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 92(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

7. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

1486-71-R: THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL 2466 (APPLICANT) V. A AND W CARPENTRY (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: R.A. FURNESS, VICE CHAIRMAN AND BOARD MEMBERS E. BOYER AND F.W. MURRAY.

APPEARANCES AT THE HEARING: T.G. HARKNESS FOR THE APPLICANT; ARCHIE J. KELFORD FOR THE RESPONDENT; NO ONE APPEARING FOR THE GROUP OF EMPLOYEES.

DECISION OF THE BOARD: MARCH 9, 1972.

1. THE NAME "A. AND W. CARPENTRY CONSTRUCTION" APPEARING IN THE STYLE OF CAUSE OF THIS APPLICATION AS THE NAME OF THE RESPONDENT IS AMENDED TO READ: "A AND W CARPENTRY".

2. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(N) OF THE LABOUR RELATIONS ACT.

3. THE BOARD FURTHER FINDS THAT THIS IS AN APPLICATION FOR CERTIFICATION WITHIN THE MEANING OF SECTION 108 OF THE LABOUR RELATIONS ACT.

4. THE BOARD FURTHER FINDS THAT ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF RENFREW, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

5. ALTHOUGH DULY NOTIFIED OF THE TIME, DATE, PLACE AND PURPOSE OF THE HEARING IN THIS MATTER, THE EMPLOYEES WHO FILED STATEMENTS OF DESIRE IN OPPOSITION TO THIS APPLICATION DID NOT ATTEND AT THE HEARING BEFORE THE BOARD. THE RESPONDENT INFORMED THE BOARD THAT HIS FORMER EMPLOYEES (THE EMPLOYEES AFFECTED BY THIS APPLICATION) WERE FINANCIALLY UNABLE TO ATTEND AT THIS HEARING IN TORONTO. HOWEVER, THERE IS NO EVIDENCE BEFORE THE BOARD THAT THESE EMPLOYEES MADE ANY REPRESENTATIONS TO THE BOARD REGARDING THEIR INABILITY TO ATTEND THIS HEARING IN TORONTO

OR THAT THEY WOULD HAVE ATTENDED A HEARING OF THE BOARD IN THE EVENT THAT IT WAS HELD AT OR NEAR THEIR HOMES.

6. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN SIXTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON JANUARY 28, 1972, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 92(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

7. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

564-71-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) v. SUNRISE PAVING & CONSTRUCTION CO. LTD. (RESPONDENT) v. OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, LOCAL UNION 172 (INTERVENER).

BEFORE: R.A. FURNESS, VICE CHAIRMAN AND BOARD MEMBERS F.W. MURRAY AND P.J. O'KEEFE.

APPEARANCES AT THE HEARING: R. KOSKIE AND A.M. MINSKY FOR THE APPLICANT; R.D. PERKINS FOR THE RESPONDENT. AUBREY E. GOLDEN AND RALPH D'ALLESANDRO FOR THE INTERVENER.

DECISION OF THE BOARD: MARCH 9, 1972.

1. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(N) OF THE LABOUR RELATIONS ACT.

2. THE BOARD FURTHER FINDS THAT THIS IS AN APPLICATION FOR CERTIFICATION WITHIN THE MEANING OF SECTION 108 [FORMERLY SECTION 92] OF THE LABOUR RELATIONS ACT.

3. IN THIS APPLICATION FOR CERTIFICATION THE APPLICANT IS SEEKING CERTIFICATION ON BEHALF OF A BARGAINING UNIT DEFINED IN TERMS OF

"ALL EMPLOYEES WORKING FOR THE RESPONDENT IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO SAVE AND EXCEPT NON-WORKING FOREMEN,

PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, SHOP AND YARD EMPLOYEES, MACHINE OPERATORS, (BULLDOZERS, GRADER ETC.) ENGINEERING AND CLERICAL STAFF".

4. THE RESPONDENT AND THE INTERVENER TAKE THE POSITION THAT THE EMPLOYEES AFFECTED BY THIS APPLICATION ARE ALREADY COVERED BY A COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERVENER EFFECTIVE FROM JULY 21, 1970 UNTIL APRIL 30, 1973 AND FROM YEAR TO YEAR THEREAFTER SUBJECT TO NOTICE.

5. THE APPLICANT, ON THE OTHER HAND, ALLEGES THAT THE COLLECTIVE AGREEMENT REFERRED TO IN PARAGRAPH 4 HEREIN IS NOT A COLLECTIVE AGREEMENT WITHIN THE MEANING OF SECTION 1(1)(E) [FORMERLY SECTION 1(1)(C)] OF THE LABOUR RELATIONS ACT, THAT THIS APPLICATION FOR CERTIFICATION IS TIMELY AND THAT MOREOVER THE INTERVENER HAS NO STATUS TO BE A PARTY TO THIS PROCEEDING SINCE IT IS NOT THE BARGAINING AGENT OF THE EMPLOYEES AFFECTED BY THIS APPLICATION.

6. AT THE HEARING IN THIS MATTER THE PARTIES AGREED TO THE FOLLOWING STATEMENTS OF FACTS WITH RESPECT TO THE HISTORY OF THE RELATIONSHIP BETWEEN THE RESPONDENT AND THE INTERVENER (AND THAT THESE FACTS APPLIED TO THE SIVI CONSTRUCTION LIMITED CASE BOARD FILE #566-71-R; THE DI NARDO & SONS LTD. CASE, BOARD FILE #567-71-R; THE PERFETTI BROTHERS CONSTRUCTION COMPANY LIMITED CASE, BOARD FILE #568-71-R AND THE PANZA BROS. CONTRACTORS CASE, BOARD FILE #570-71-R):

I THE FIRST COLLECTIVE AGREEMENT EXPIRING APRIL 30, 1970, EXECUTED IN MARCH OR APRIL, 1968, AT WHICH TIME, NONE OF THE RESPONDENT COMPANIES HAD ANY EMPLOYEES WITHIN THE BARGAINING UNIT.

II THE INTERVENER HAD NOT BEEN CERTIFIED BY THE OLRB AS TO ANY OF THE RESPONDENT COMPANIES.

III WHEN THE COMPANIES COMMENCED OPERATIONS DURING THE TERM OF THE FIRST AGREEMENT, ALL OF THEIR EMPLOYEES BECAME MEMBERS OF THE INTERVENER PURSUANT TO THE FIRST AGREEMENT AND SIGNED PAYROLL DEDUCTION DUES AUTHORIZATION CARDS. NONE OF THESE EMPLOYEES HAD BEEN MEMBERS OF THE INTERVENER UNION.

IV PURSUANT TO ARTICLE 4 OF THE FIRST

AGREEMENT, THE COMPANIES DEDUCTED FROM EMPLOYEES' WAGES AND FORWARDED TO THE INTERVENER, INITIATION FEES AND MONTHLY DUES FOR ALL THEIR EMPLOYEES COMING WITHIN THE BARGAINING UNIT WHICH PRACTICE HAS CONTINUED TO DATE.

- V PURSUANT TO THE SECOND AGREEMENT, EFFECTIVE JULY 21, 1970 AND EXPIRING APRIL 30, 1973, THE RESPONDENT COMPANIES HAVE DEDUCTED AND REMITTED INITIATION FEES AND MONTHLY CHECK-OFF AS PER ARTICLE 4 OF THE AGREEMENT FOR ALL EMPLOYEES OF THE BARGAINING UNIT.
- VI IN BOTH AGREEMENTS, THE RESPONDENT COMPANIES HAVE FOLLOWED THE PRACTICE AS SET FORTH IN ARTICLE 4 AS TO THE COMPULSORY MEMBERSHIP IN THE INTERVENER.
- VII THE RESPONDENT COMPANIES HAVE, PURSUANT TO ARTICLE 17.01 OF THE SECOND AGREEMENT, REMITTED WELFARE FUND CONTRIBUTIONS AS PROVIDED FOR THEREIN.
- VIII THAT AT THE TIME OF THE NEGOTIATION AND SIGNING OF THE SECOND AGREEMENT EFFECTIVE JULY 21, 1970 AND EXPIRING APRIL 30, 1973, EACH RESPONDENT COMPANY HAD EMPLOYEES WHO WERE MEMBERS OF THE INTERVENER AND THE SAID EMPLOYEES PARTICIPATED IN THE NEGOTIATIONS LEADING UP TO THE MAKING OF THE SAID AGREEMENT AND RATIFIED IT, ALL OF WHICH EMPLOYEES BECAME MEMBERS OF THE INTERVENER DURING THE CURRENCY OF THE FIRST COLLECTIVE AGREEMENT.
- IX THAT THE EMPLOYEES HAVE BEEN ENTITLED TO AND HAVE RECEIVED THE FULL BENEFITS OF UNION MEMBERSHIP AND PARTICIPATED IN THE WELFARE PLAN ESTABLISHED BY THE INTERVENER.
- X THAT THERE WERE NO AGREEMENTS OR ARRANGEMENTS BETWEEN THE RESPONDENT COMPANIES AND THE INTERVENER OTHER THAN THOSE SET FORTH IN THE ABOVE AGREEMENTS WHICH WOULD RESULT IN THE RESPONDENT COMPANIES IN-

FLUENCING OR DOMINATING THE CONDUCT OF
THE INTERVENER.

7. THE APPLICANT ARGUED THAT SINCE THE FIRST ALLEGED COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERVENER WAS EXECUTED AT A TIME WHEN THERE WERE NO EMPLOYEES IN THE BARGAINING UNIT DEFINED THERE- IN SUCH AN AGREEMENT WAS NOT A COLLECTIVE AGREEMENT WITHIN THE MEANING OF SECTION 1(1)(E) [FORMERLY SECTION 1(1)(C)] OF THE LABOUR RELATIONS ACT. THE APPLICANT ALSO MAINTAINED THAT BY VIRTUE OF ARTICLE 4 OF THE FIRST AGREEMENT, THE EMPLOYEES OF THE RESPONDENT WERE, AS A CONDITION OF EMPLOYMENT, COMPELLED TO APPLY FOR MEMBERSHIP IN THE INTERVENER WITHIN 48 HOURS OF WORK FOR THE RESPONDENT AND THAT, FURTHER, AS A CONDITION OF EMPLOYMENT, SUCH EMPLOYEES WERE COMPELLED TO COMPLETE PAYROLL DEDUCTION DUES AUTHORIZATION CARDS SO THAT THE EMPLOYER COULD DEDUCT MONTHLY DUES FROM THE PAY OF THE EMPLOYEES AND REMIT SAME TO THE INTERVENER.

8. ARTICLE 4 OF THE FIRST ALLEGED COLLECTIVE AGREEMENT PROVIDED:

"UNION SECURITY

4.01 THE EMPLOYER AGREES TO EMPLOY ONLY MEMBERS IN GOOD STANDING WITH THE UNION. THE UNION MUST BE GIVEN PREFERENCE IN SUPPLYING MEN TO THE EMPLOYER UNDER THIS AGREEMENT. IF THE UNION IS UNABLE TO SUPPLY EMPLOYEES THEN THE EMPLOYER MAY HIRE THEM PROVIDED, HOWEVER, THAT ANY EMPLOYEE SO HIRED MUST APPLY FOR MEMBERSHIP IN THE UNION WITHIN FORTY-EIGHT (48) HOURS OF COMMENCING WORK AND MAY NOT WORK FOR THE EMPLOYER AFTER THAT TIME WITHOUT A REFERRAL SLIP OR MEMBERSHIP CARD IN THE UNION.

4.02 EVERY PRESENT EMPLOYEE OF THE EMPLOYER SHALL, AS A CONDITION OF EMPLOYMENT, COMPLETE A PAYROLL DEDUCTION DUES AUTHORIZATION CARD SO THAT HIS MONTHLY DUES MAY BE DEDUCTED AS A PAYROLL DEDUCTION BY THE EMPLOYER.

4.03 INITIATION FEES AND MONTHLY DUES SHALL BE AS ESTABLISHED BY THE MEMBERSHIP OF THE UNION FROM TIME TO TIME.

4.04 THE EMPLOYER SHALL MAKE A DEDUCTION FROM THE FIRST PAYCHEQUE OF EACH EMPLOYEE EACH MONTH TO COVER UNION DUES AND/OR MEMBERSHIP FEES, AND SHALL SEND SUCH DEDUCTIONS TO THE UNION TOGETHER WITH A LIST OF THE NAMES OF THE EMPLOYEES FROM WHOM SUCH DEDUCTIONS HAVE BEEN MADE AND THE AMOUNTS DEDUCTED FROM THE PAY-CHEQUES OF EACH."

9. THE APPLICANT ALSO ARGUED THAT THE ARRANGEMENTS ENTERED INTO BETWEEN THE RESPONDENT AND THE INTERVENER IN THE FIRST AGREEMENT CONSTITUTED SUPPORT BY AN EMPLOYER WITHIN THE MEANING OF SECTION 40 (FORMERLY SECTION 36) OF THE LABOUR RELATIONS ACT AND THAT HAVING REGARD TO THE PROVISIONS OF THAT SECTION SUCH AGREEMENT IS DEEMED NOT TO BE A COLLECTIVE AGREEMENT WITHIN THE MEANING OF SECTION 1(1)(E) OF THE LABOUR RELATIONS ACT.

10. THE APPLICANT REASONED THAT IF THE FIRST ALLEGED COLLECTIVE AGREEMENT WAS NOT A COLLECTIVE AGREEMENT WITHIN THE MEANING OF SECTION 1(1)(E) OF THE LABOUR RELATIONS ACT THEN THE SECOND ALLEGED COLLECTIVE AGREEMENT COULD NOT BE A COLLECTIVE AGREEMENT WITHIN THE MEANING OF SECTION 1(1)(E) OF THE LABOUR RELATIONS ACT. IT WAS THE POSITION OF THE APPLICANT ON THIS LATTER POINT THAT THE ORIGINAL DEFECT, NAMELY, THAT THE INTERVENER DID NOT REPRESENT EMPLOYEES OF THE RESPONDENT, ARISING OUT OF THE FIRST AGREEMENT, IS NOT CURED BY ANY SUBSEQUENT AGREEMENT BECAUSE AT THE TIME THAT THE SECOND AGREEMENT WAS SIGNED THE INTERVENER REPRESENTED EMPLOYEES WHO BECAME MEMBERS HAVING REGARD TO ARTICLE 4 OF THE FIRST ALLEGED COLLECTIVE AGREEMENT WHICH HAD BEEN ENTERED INTO UNDER THE CIRCUMSTANCES OUTLINED ABOVE.

11. IT WAS THE POSITION OF THE APPLICANT THAT SINCE THE INTERVENER WAS NOT A PARTY TO A COLLECTIVE AGREEMENT WITH RESPECT TO THE EMPLOYEES AFFECTED BY THIS APPLICATION AND SINCE IT HAD NOT FILED EVIDENCE OF MEMBERSHIP WITH RESPECT TO EMPLOYEES AFFECTED BY THIS APPLICATION, THE INTERVENER HAS NO STATUS TO MAKE REPRESENTATIONS OR ALLEGATIONS OF IMPROPER OR IRREGULAR CONDUCT IN THIS APPLICATION FOR CERTIFICATION.

12. IT WAS THE POSITION OF THE INTERVENER THAT THE BOARD HAS NO AUTHORITY TO DECLARE THAT THE FIRST ALLEGED COLLECTIVE AGREEMENT WAS INVALID AND THAT IT MUST THEREFORE LOOK TO THE POINT IN TIME WHEN THE SECOND ALLEGED COLLECTIVE AGREEMENT WAS EXECUTED AND THAT, ACCORDINGLY, THE INTERVENER, SINCE IT HAD BARGAINING RIGHTS AT THAT TIME HAS STATUS TO INTERVENE IN THIS PROCEEDING AND FILE ALLEGATIONS OF IMPROPER OR IRREGULAR CONDUCT AGAINST THE APPLICANT. THE INTERVENER MAINTAINED THAT THE JURISDICTION OF THE BOARD WAS CONFINED TO DETERMINING THE

EFFECT OF THE SECOND ALLEGED COLLECTIVE AGREEMENT AND THAT THE BOARD MAY NOT MAKE DECLARATIONS WITH RESPECT TO ALLEGED COLLECTIVE AGREEMENTS UNLESS SPECIFICALLY EMPOWERED TO DO SO UNDER THE PROVISIONS OF THE LABOUR RELATIONS ACT.

13. THE INTERVENER ARGUED THAT THE PAYMENT MADE BY MEANS OF CHEQUE TO THE INTERVENER WERE NOT MADE BY THE RESPONDENT BUT RATHER BY THE EMPLOYEES. THE EFFECT ON SECTION 40 OF THE LABOUR RELATIONS ACT, IN THE VIEW OF THE INTERVENER, MEANS THAT THE CONTRIBUTION OR SUPPORT REFERRED TO THEREIN HAS TO ORIGINATE FROM THE RESPONDENT'S OWN POCKET. THE INTERVENER EMPHASIZED THAT THE EMPLOYEES AFFECTED BY THIS APPLICATION HAD RATIFIED THE SECOND AGREEMENT AND HAD NOT SOUGHT TO TERMINATE THE ALLEGED BARGAINING RIGHTS OF THE INTERVENER.

14. THE RESPONDENT STATED THAT IT WAS ANXIOUS THAT THE WISHES OF THE EMPLOYEES SHOULD BE FOLLOWED AND THAT IT WAS A RELUCTANT PARTY TO THIS PROCEEDING. THE RESPONDENT ADOPTED THE VIEW THAT THE SECOND ALLEGED COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERVENER IS A VALID COLLECTIVE AGREEMENT BETWEEN THEM AND THAT THE FIRST ALLEGED COLLECTIVE AGREEMENT WAS NOT A COLLECTIVE AGREEMENT WITHIN THE MEANING OF SECTION 1(1)(E) OF THE LABOUR RELATIONS ACT. HOWEVER, THE RESPONDENT POINTED OUT THAT THE EMPLOYEES AFFECTED BY THIS COLLECTIVE AGREEMENT HAD A YEAR IN WHICH TO MAKE OBJECTIONS TO THE INTERVENER AS A BARGAINING AGENT BUT HAD FAILED TO DO SO.

15. IT IS READILY APPARENT THAT THE ALLEGED COLLECTIVE BARGAINING RELATIONSHIP BETWEEN THE RESPONDENT AND THE INTERVENER AROSE AS A RESULT OF ARRANGEMENT BETWEEN THEM WITHOUT REFERENCE TO OR CONSULTATION WITH THE EMPLOYEES WHO WOULD BE AFFECTED BY THIS ARRANGEMENT. CLEARLY, THE RESPONDENT SELECTED THE INTERVENER AS THE BARGAINING AGENT FOR ITS FUTURE EMPLOYEES. SUCH AN ARRANGEMENT STRIKES AT THE VERY SPIRIT OF THE LABOUR RELATIONS ACT WHICH ENVISAGES THE SELECTION OF A BARGAINING AGENT BY THE EMPLOYEES CONCERNED WITHOUT THE INTERVENTION OR INFLUENCE OF THEIR EMPLOYER.

16. EMPLOYEES OF THE RESPONDENT DID NOT HAVE AN OPPORTUNITY TO SELECT THEIR BARGAINING AGENT. THE BOARD FINDS THAT THE ACTIONS OF THE RESPONDENT IN ALL OF THE CIRCUMSTANCES OF THIS APPLICATION CONSTITUTES OTHER SUPPORT TO A TRADE UNION (THE INTERVENER) WITHIN THE MEANING OF SECTION 40(A) OF THE LABOUR RELATIONS ACT. THE BOARD IS GIVEN THE JURISDICTION TO CONSIDER THE QUESTION OF SUPPORT BY AN EMPLOYER FOR A TRADE UNION. CERTAIN CONSEQUENCES FLOW FROM THE BOARD MAKING A FINDING THAT AN EMPLOYER HAS CONTRIBUTED OTHER SUPPORT TO A TRADE UNION. THIS CONSEQUENCE IS SET FORTH IN SECTION 40 OF THE LABOUR RELATIONS ACT.

17. THE FACT THAT THE RESPONDENT AND THE INTERVENER HAVE ENTERED

INTO A SECOND ALLEGED COLLECTIVE AGREEMENT DOES NOT CURE THE INITIAL CONDUCT OF THE RESPONDENT AND THE INTERVENER IN ENTERING IN THE FIRST ALLEGED COLLECTIVE AGREEMENT IN THE CIRCUMSTANCES SET FORTH ABOVE. THE STATUS WHICH THE INTERVENER CLAIMS IN THIS PROCEEDINGS IS FOUNDED UPON CONDUCT WHICH OFFENDS THE PROVISIONS OF SECTION 40(A) OF THE LABOUR RELATIONS ACT. THE SUBSEQUENT RELATIONSHIP BETWEEN THE RESPONDENT AND IN THE INTERVENER IS FOUNDED UPON CONDUCT WHICH FALLS WITHIN THE PROVISIONS OF SECTION 40(A) OF THE LABOUR RELATIONS ACT. THE SUBSEQUENT RELATIONSHIP BETWEEN THE RESPONDENT AND THE INTERVENER AS EVIDENCED BY THE TWO ALLEGED COLLECTIVE AGREEMENTS BETWEEN THEM DOES NOT CURE THE INITIAL IMPROPRIETY OF THEIR RELATIONSHIP. (C.F. THE NAVCO FOOD SERVICES LIMITED CASE, OLRB M.R. FEBURARY 1971, P.80).

18. HAVING REGARD TO THE FACT THAT THE INTERVENER RECEIVED OTHER SUPPORT FROM THE RESPONDENT WITHIN THE MEANING OF SECTION 40(A) OF THE LABOUR RELATIONS ACT, THE TWO ALLEGED COLLECTIVE AGREEMENTS BETWEEN THE RESPONDENT AND THE INTERVENER ARE DEEMED NOT TO BE COLLECTIVE AGREEMENTS FOR THE PURPOSES OF THE LABOUR RELATIONS ACT AND ARE HENCE NOT A BAR TO THIS APPLICATION FOR CERTIFICATION. HAVING REGARD TO THE CIRCUMSTANCES OF THIS APPLICATION AND TO THE REPRESENTATIONS OF THE PARTIES THE BOARD FINDS THAT THE INTERVENER DOES NOT HAVE STATUS TO THE INTERVENE IN THIS PROCEEDING. THE INTERVENTION OF THE INTERVENER IS ACCORDINGLY DISMISSED.

19. THE REGISTRAR IS DIRECTED TO LIST THIS MATTER FOR CONTINUATION OF HEARING ON ALL OUTSTANDING ISSUES.

1202-71-U: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) (COMPLAINANT) V. NORTHERN ELECTRIC COMPANY LIMITED (RESPONDENT).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS J. D. BELL AND P. J. O'KEEFE.

APPEARANCES AT THE HEARING: R. RUSSELL, W. LUCAS AND D. TYNER FOR THE COMPLAINANT; CLAUDE HARARI AND GEORGE HEANY FOR THE RESPONDENT.

DECISION OF THE BOARD: MARCH 9, 1972.

1. THIS IS A COMPLAINT UNDER SECTION 79 OF THE LABOUR RELATIONS ACT IN WHICH THE COMPLAINANT ALLEGES THAT THE RESPONDENT HAS DEALT WITH DAVID THOMAS COULING CONTRARY TO THE PROVISIONS OF SECTION 58 OF THE ACT.

2. COULING WAS HIRED BY THE RESPONDENT ON SEPTEMBER 7, 1971 AND WAS TERMINATED ON OCTOBER 29, 1971. HE WAS REHIRED ON DECEMBER 6, 1971.

3. THE COMPLAINANT ALLEGES THAT THE RESPONDENT TERMINATED COULING'S EMPLOYMENT ON OCTOBER 29, 1971 BECAUSE OF HIS PARTICIPATION IN

UNION ORGANIZATIONAL ACTIVITIES. THE COMPANY DENIES THIS ALLEGATION. IT TAKES THE POSITION THAT COULING WAS HIRED CONDITIONALLY BECAUSE OF HIS MEDICAL CLASSIFICATION AT THE TIME HE WAS ENGAGED. THE COMPANY SUBMITS THAT COULING EITHER VOLUNTARILY RESIGNED OR HE WAS TERMINATED BECAUSE OF HIS FAILURE TO TAKE STEPS TO BRING HIMSELF WITHIN AN ACCEPTABLE MEDICAL CATEGORY. THERE IS NO DISPUTE THAT COULING WAS PLACED IN CATEGORY AC AT THE TIME OF HIS HIRING BY REASON OF BEING OVERWEIGHT. IT IS COMMON GROUND THAT HE WAS TOLD AT THE TIME OF HIS EMPLOYMENT INTERVIEW THAT IF HE DID NOT LOSE WEIGHT, HE WOULD LOSE HIS JOB. HE TESTIFIED THAT WALTER TURINI, EMPLOYMENT MANAGER, TOLD HIM HE WOULD BE REWEIGHED IN TWO MONTHS.

4. THERE IS NO DOUBT THAT COULING TOOK AN ACTIVE PART IN THE AFFAIRS OF THE COMPLAINANT UNION. HE ATTENDED MEETINGS, SIGNED UP EMPLOYEES AS MEMBERS IN THAT UNION AND WAS SEEN BY COMPANY MANAGEMENT PERSONS IN THE COMPANY OF OFFICERS OF THE UNION AT THE COMPANY OPEN HOUSE HELD TO ENABLE THE PUBLIC AT LARGE TO VIEW THE PLANT WHICH HAD A NEW ONE, THIS WAS ON NOVEMBER 26, 1971.

5. ON OCTOBER 27, 1971, COULING ATTENDED A UNION MEETING AT THE UNION HALL. THIS MEETING WAS ATTENDED BY OTHER EMPLOYEES, SOME OF WHOM WERE MEMBERS AND SOME OF WHOM WERE NOT MEMBERS OF THE UNION. HE ANNOUNCED HIS INTENTION OF SIGNING UP MEMBERS. THE FOLLOWING DAY, OCTOBER 28, 1971, COULING SIGNED UP THREE EMPLOYEES. HE SAID THAT THIS WAS DONE IN THE CAFETERIA AND IN THE LOCKERROOM AND WAS DONE QUITE OPENLY.

6. COULING WAS INTERVIEWED BY WALTER TURINI ON OCTOBER 29, 1971. SHORTLY AFTER 9:15 A.M. HE WAS ASKED TO ATTEND TURINI'S OFFICE WHERE HE WAS TOLD THAT THE TIME HAD COME TO HAVE HIS WEIGHT CHECKED. THIS WAS ABOUT SEVEN WEEKS FROM THE DATE OF HIS HIRING AT WHICH TIME HE HAD BEEN TOLD HE WOULD BE REWEIGHED IN TWO MONTHS. HE WAS SENT TO DOCTOR STAEBLER AND WAS WEIGHED WITH HIS CLOTHES AND BOOTS ON. HE WEIGHED 203 LBS. IT WAS COULING'S TESTIMONY THAT HE TOLD TURINI AND A PERSON NAMED MUNN OF THE PERSONNEL DEPARTMENT THAT HIS CORRECT WEIGHT - STRIPPED - WAS 195 LBS. AND HE FELT THAT HE SHOULD NOT HAVE BEEN WEIGHED WHILE CLOTHED. THE MEDICAL REPORT GIVEN TO TURINI SHOWS HIM TO BE IN MEDICAL CATEGORY C. DR. STAEBLER'S REPORT CONTAINED THE FOLLOWING OBSERVATIONS:

"WT. ON ORIGINAL MEDICAL 3 SEP 71 WAS 205 LBS.
TODAY 29/10/71 203LBS HT. 68"
WT SCALE DESIRABLE 152LBS = 53 LB OVERWEIGHT
COMPANY LIMITS 30% = 46 LB

ASPER PAGE 10 OF MANUAL - FAILS TO MEET STANDARD
REQUIRES CLASS "C" UNTIL WEIGHT IS BELOW 190 LBS.
AND THEN CLASS AC UNTIL SHOWN TO BE STABLE AT
THAT WEIGHT.

R. J. STAEBLER, M.D., M.C.F.P.
REDDENDALE MEDICAL CENTRE
KINGSTON, ONTARIO

TURINI TOLD COULING THAT HE WOULD HAVE TO RESIGN OR QUIT BECAUSE OF HIS OVERWEIGHT, SINCE CATEGORY C WAS AN UNEMPLOYABLE CATEGORY.

7. COULING SIGNED AN EXIT INTERVIEW FORM SUPPLIED BY THE COMPANY WHICH BROUGHT HIS EMPLOYMENT TO AN END ON OCTOBER 29, 1971. HE WAS THEN BROUGHT BY TURINI TO SEE HIS FOREMAN. THE LATTER WAS NOT AVAILABLE, SO TURINI ASKED ANOTHER EMPLOYEE TO HELP COULING CLEAN OUT HIS LOCKER. TURINI THEN WALKED WITH HIM TO THE DOOR OF THE PLANT. COULING WAS PAID A FULL DAY'S PAY NOTWITHSTANDING THE FACT THAT HE LEFT IN THE FORENOON. HE WAS GIVEN TO UNDERSTAND THAT IF AND WHEN HE REDUCED HIS WEIGHT TO ACCEPTABLE LIMITS, HE WOULD BE REHIRED. EVENTUALLY, COULING ATTAINED AN ACCEPTABLE WEIGHT AND, AS ALREADY NOTED, WAS REHIRED ON DECEMBER 6, 1971.

8. AS PREVIOUSLY STATED, THE UNION CONTEND THAT THE TERMINATION IS NOT BASED UPON MEDICAL GROUNDS BUT CAME ABOUT BECAUSE THE COMPANY OBJECTED TO COULING EXERCISING HIS RIGHT UNDER THE ACT TO JOIN A TRADE UNION AND TAKE PART IN ITS ACTIVITIES.

9. THE EVIDENCE OF BOTH PARTIES IS THAT THERE WAS A CONSIDERABLE AMOUNT OF UNION ACTIVITY IN AND AROUND THE PLANT ALMOST FROM THE DAY IT OPENED. THERE WAS EVIDENCE THAT THREE INTERNATIONAL UNIONS, ONE CANADIAN UNION AND ONE EMPLOYEES' ORGANIZATION, WERE ALL IN THE FIELD ENDEAVOURING TO BECOME THE BARGAINING AGENT FOR THE EMPLOYEES IN THIS NEW PLANT. IT IS EQUALLY CLEAR THAT EVERYONE, MANAGEMENT AND EMPLOYEES, WERE FULLY AWARE OF ALL THIS ACTIVITY AND THAT TALK OF UNION ORGANIZATION WAS RIFE THROUGHOUT THE PLANT. THERE WERE CIRCULARS AND NOTICES OF MEETINGS BEING PASSED OUT, SOME OF WHICH CONTAINED THE NAMES OF THE PEOPLE INVOLVED. WALTER TURINI WAS FULLY AWARE OF ALL OF THIS. IT IS CLEAR HE WAS ALSO AWARE OF WHO SOME OF THE ORGANIZERS WERE. HE KNEW THAT GARRY LAFOIE, BRUCE FOSTER AND WALTER COULING WERE ORGANIZERS. HE STATED, THERE WERE OTHERS WHOSE NAMES ESCAPED HIM. ON THE BASIS OF THE EVIDENCE OF LAFOIE AND COULING, IT APPEARS THAT TURINI KNEW OF COULING'S CONNECTION WITH THE UNION FOR AT LEAST A WEEK BEFORE HIS TERMINATION. IT IS CLEAR THAT TURINI TOOK A KEEN AND ACTIVE INTEREST IN WHAT WAS GOING ON. SUCH INTEREST, IN A PERSON IN HIS POSITION PARTICULARLY, IS QUITE UNDERSTANDABLE AND LEGITIMATE AND NO INFERENCE ADVERSE TO HIM OR THE COMPANY CAN BE REASONABLY DRAWN FROM SUCH CONDUCT.

10. THE COMPANY, ACCORDING TO THE EVIDENCE, HAD APPARENTLY ANTICIPATED THE APPEARANCE OF UNION ORGANIZERS AT THE NEW PLANT. DURING INDUCTION LECTURES IT ADVISED THE NEW EMPLOYEES THAT THEY COULD EXPECT TO BE APPROACHED BY UNIONS. IT TOLD THESE EMPLOYEES THAT WHETHER THEY JOINED A UNION OR NOT WAS TO BE ENTIRELY THEIR OWN DECISION. THE ONLY RESTRICT-

TION THE COMPANY HAD IN THE MATTER WAS THAT THEY AVOID UNION ACTIVITY ON COMPANY PREMISES DURING COMPANY TIME. THIS WAS THE EVIDENCE OF LAFOIE AND COULING FOR THE UNION AS WELL AS THAT OF TURINI FOR THE COMPANY. LAFOIE SAID HE TOLD TURINI THAT HE WAS A MEMBER OF THE UNION. HE SAID HE FELT IT WAS RIGHT TO SAY IT AND THAT HE FELT FREE ENOUGH TO SAY IT WITHOUT FEARING ANY COMEBACK. IT WOULD APPEAR THAT UNION RECRUITMENT WAS WIDE OPEN AND UNRESTRICTED SAVE ONLY AS TO ACTIVITY ON THE COMPANY PREMISES AND TIME.

11. DR. ARTHUR KARR, THE WESTERN AREA MEDICAL DIRECTOR OF THE COMPANY, TESTIFIED WITH RESPECT TO THE MEDICAL CATEGORIES USED BY THE COMPANY AND THE PROCEDURES FOLLOWED IN DEALING WITH EMPLOYEES UNDER THOSE CATEGORIES.

12. THIS EVIDENCE INDICATES, AS MIGHT BE EXPECTED, THAT THE MEDICAL CATEGORIZING IS PURELY A FUNCTION OF THE MEDICAL DEPARTMENT WHO THEN REPORT TO THE EMPLOYMENT SECTION. THE LATTER HAVE NOTHING TO DO WITH THE SELECTION OF EMPLOYEES' MEDICAL CATEGORIES, BUT ARE REQUIRED TO DEAL WITH EMPLOYEES IN ACCORDANCE WITH COMPANY RULES HAVING TO DO WITH THE CATEGORIES INTO WHICH THE MEDICAL PEOPLE PLACE THEM.

13. DR. KARR EXPLAINED THAT THE MEDICAL CATEGORIES EMPLOYED ARE THREE IN NUMBER. AN EMPLOYEE WHO IS PLACED IN CATEGORY "A" IS MEDICALLY FIT FOR ALL EMPLOYMENT. "B" CATEGORY MEANS THAT THE PERSON INVOLVED HAS A PERMANENT IMPAIRMENT WHICH PREVENTS HIM FROM DOING CERTAIN KINDS OF WORK. A PERSON DESIGNATED AS CATEGORY "C" IS ONE WHO HAS A DEFECT IN HIS MEDICAL CONDITION WHICH IS REQUIRED TO BE CORRECTED BEFORE HE COMMENCES EMPLOYMENT. FINALLY, CATEGORY "AC" IS RESERVED FOR PERSONS WHO HAVE A DEFECT IN THEIR MEDICAL CONDITION WHICH SHOULD BE CORRECTED BUT IS OF SUCH A DEGREE THAT HE MAY BE EMPLOYED WHILE THE CONDITION IS BEING CORRECTED.

14. IT IS NOT PART OF THE COMPANY MEDICAL POLICY TO PRESCRIBE TREATMENT FOR ANY MEDICAL DEFECT UNCOVERED DURING THE COURSE OF A MEDICAL EXAMINATION. THE MEDICAL BRANCH DOES NOT PURPORT TO TAKE THE PLACE OF AN EMPLOYEE'S PERSONAL PHYSICIAN. IT RESTRICTS ITSELF TO ADVISING THE PERSON CONCERNED OF THE CONDITION FOUND SO THAT HE CAN CONSULT HIS PERSONAL PHYSICIAN IN THE MATTER IF HE SO DESIRES. IT WAS FOR THIS REASON, DR. KARR STATED, THAT TREATMENT WAS NOT PRESCRIBED FOR COULING.

15. IT WAS DR. KARR'S TESTIMONY THAT COULING'S RE-EXAMINATION FOLLOWED ROUTINE COMPANY PRACTICE. HE TESTIFIED THAT CONDITIONAL CLASSIFICATIONS ARE ALL FOLLOWED UP IN A REASONABLE TIME TO DETERMINE IF A CLASSIFICATION CAN BE CHANGED. IN REPLY TO A SPECIFIC QUESTION, DR. KARR STATED THAT HE HAD RECEIVED NO INSTRUCTIONS FROM THE COMPANY TO REVIEW COULING'S MEDICAL STATUS AND THAT IT HAD COME ABOUT IN THE

NORMAL WAY IN HIS OFFICE. COULING'S REVIEW, IN HIS OPINION, MAY WELL HAVE BEEN THE FIRST BECAUSE THE CASES ARE REVIEWED IN ALPHABETICAL ORDER.

16. THE RE-EXAMINATION OF COULING WAS, ACCORDING TO THE UNCONTRADICTED TESTIMONY OF DR. KARR, INITIATED BY HIMSELF BY MEANS OF A MEMORANDUM DATED OCTOBER 27, 1971. IT IS DIRECTED TO MR. R. A. MUNN, WHO IS IN THE PERSONNEL DEPARTMENT OF THE PLANT, AND TO DR. R. J. STAEBLER. THE TEXT OF THE MEMORANDUM IS AS FOLLOWS:

"ON PRE-PLACEMENT EXAMINATION, THIS MAN WAS CLASSIFIED ON (SIC) AC DUE TO AN OVERWEIGHT PROBLEM. IT HAS NOW BEEN SEVEN WEEKS SINCE HIS PRE-PLACEMENT EXAM, AND IT WOULD SEEM REASONABLE THAT SOME IMPROVEMENT SHOULD BE SEEN IN HIS WEIGHT REDUCTION PROGRAM.

WOULD YOU THEREFORE ARRANGE TO HAVE THIS MAN SEEN, WEIGHED, AND EXAMINED BY DR. STAEBLER, TO DETERMINE IF HE HAS SHOWN IMPROVEMENT. IF HE SHOWS A WEIGHT REDUCTION TO WITHIN 20% OF THE CANADIAN AVERAGE WEIGHT, WITHIN THREE MONTHS OF DATE OF HIRE, HE MAY BE RECLASSIFIED A. IF, HOWEVER NO IMPROVEMENT HAS BEEN SHOWN TO THIS POINT, HE SHOULD BE RECLASSIFIED C.

A. W. KARR, M.D.
ONTARIO AREA MEDICAL DIRECTOR."

THE REPORT OF DR. STAEBLER HAS ALREADY BEEN SET OUT IN PARAGRAPH SIX HEREOF.

17. IT WAS POINTED OUT TO DR. KARR THAT HIS MEMORANDUM MADE REFERENCE TO A REDUCTION TO WITHIN 20% OF THE CANADIAN AVERAGE WEIGHT, WHEREAS THE STAEBLER REPORT REFERRED TO 30%. DR. KARR STATED THAT ANYWHERE UP TO 30% IS ACCEPTABLE TO THE COMPANY SUBJECT TO THE CONDITION OF OTHER PHYSICAL FACTORS SUCH AS THE BUILD, HABITS AND HEIGHT OF THE PERSON EXAMINED. HE SAID IN CASES SUCH AS COULING, WHO WAS 35% OVER THE AVERAGE, THERE IS AN ATTEMPT TO GET WELL BELOW THE LINE. HE SAID, THE MEDICAL DEPARTMENT WAS NOT INTERESTED IN TECHNICALITIES AND COULD NOT DEAL WITH ABSOLUTES IN MEDICAL TERMS. HIS MEMORANDUM MADE REFERENCE TO IMPROVEMENT AND HE STATED THAT IF COULING HAD SHOWN A WEIGHT REDUCTION TO SOMEWHERE BETWEEN 190 LBS. AND 200 LBS. WITHIN THE SEVEN WEEKS, HE COULD HAVE CONTINUED IN CLASS "AC" SO LONG AS HE CONTINUED TO REDUCE. THIS, HE STATED, EXPLAINED HIS REFERENCE TO THE THREE MONTH PERIOD. THAT IS THAT IF, AT THE EXAMINATION, IT APPEARED THAT COULING'S PROGRESS WAS SUCH THAT HE WOULD REACH THE REQUIRED

LIMITS WITHIN THREE MONTHS HIS CATEGORY WOULD REMAIN "AC". IN ANY EVENT, STAEBLER, ALLOWING 30% VARIATION, CLASSIFIED COULING AS "C" AND TURINI WAS SO ADVISED.

18. ON THE BASIS OF THE EVIDENCE, WE ARE OF THE OPINION THAT THE MEDICAL EXAMINATIONS OF COULING WERE CARRIED OUT IN ACCORDANCE WITH THE ESTABLISHED MEDICAL PRACTICE OF THE COMPANY AND THAT THE DECISIONS REACHED WERE BASED SOLELY UPON THE DOCTOR'S PROFESSIONAL ASSESSMENTS OF THE FACTS.

19. THERE CAN BE NO DOUBT, ON THE EVIDENCE, THAT THE MEDICAL REQUIREMENTS OF THE COMPANY WERE IN EXISTENCE PRIOR TO THE TIME COULING WAS HIRED. IT IS EQUALLY CLEAR THAT COULING WAS PLACED IN CATEGORY "AC" BY THE MEDICAL DEPARTMENT OF THE COMPANY BEFORE ANY QUESTION OF HIS SUPPORT OF OR MEMBERSHIP IN THE COMPLAINANT UNION HAD ARISEN. HE WAS EMPLOYED UPON A CONDITIONAL BASIS AND CONTINUED ON THAT BASIS THROUGHOUT THE PERIOD FROM THE DATE OF HIS HIRING TO HIS TERMINATION ON OCTOBER 29, 1971. WE ARE SATISFIED THAT THE MOVE TO HAVE COULING RE-EXAMINED AT THE TIME AT WHICH HE WAS INITIATED BY THE MEDICAL DEPARTMENT ON THE BASIS OF ITS NORMAL PROCEDURE AND NOT BY THE PERSONNEL DEPARTMENT OR UPON ITS REQUEST. WE ARE FURTHER SATISFIED THAT THE EVIDENCE ESTABLISHES THAT BY REASON OF A RULING MADE PRIOR TO THE HIRING OF COULING, PERSONS IN MEDICAL CATEGORY "C" WERE NOT EMPLOYABLE BY THE COMPANY.

20. HAVING REGARD TO ALL OF THE EVIDENCE, WE FIND THAT THE COMPLAINANT HAS NOT DISCHARGED THE ONUS RESTING UPON IT TO ESTABLISH THAT THE RESPONDENT HAS TREATED DAVID THOMAS COULING IN A MANNER CONTRARY TO THE PROVISIONS OF THE LABOUR RELATIONS ACT.

21. THE COMPLAINT IS THEREFORE DISMISSED.

1524-71-U: RETAIL CLERKS INTERNATIONAL ASSOCIATION (COMPLAINANT) V. SUNNYBROOK FOOD MARKET (KEELE) LTD. (RESPONDENT).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND F. W. MURRAY.

DECISION OF THE BOARD: MARCH 9, 1972.

1. THIS IS A COMPLAINT UNDER SECTION 79 OF THE LABOUR RELATIONS ACT WHEREIN IT IS ALLEGED THAT THE THREE AGGRIEVED PERSONS WERE DISCHARGED BY THE RESPONDENT CONTRARY TO THE LABOUR RELATIONS ACT BECAUSE THEY SUPPORTED THE COMPLAINANT'S ATTEMPT TO ORGANIZE THE RESPONDENT'S EMPLOYEES. IT APPEARS THAT AT THE TIME THE COMPLAINANT WAS ATTEMPTING TO ORGANIZE THE RESPONDENT'S EMPLOYEES, THE EMPLOYEES WERE COVERED BY

A COLLECTIVE AGREEMENT BETWEEN LOCAL 206, NATIONAL COUNCIL OF CANADIAN LABOUR AND THE RESPONDENT. IT FURTHER APPEARS THAT NO ATTEMPT HAS BEEN MADE TO RESOLVE THIS DISPUTE PURSUANT TO THE PROVISIONS OF THE COLLECTIVE AGREEMENT COVERING THE AGGRIEVED PERSONS.

2. FOR THE REASONS GIVEN BY THE BOARD IN THE COLLINGWOOD SHIPYARDS, DIVISION OF CANADIAN SHIPBUILDING & ENGINEERING LIMITED CASE, OLRB MONTHLY REPORT, JULY 1967, P. 376, THE BOARD FINDS THAT THIS APPLICATION IS PREMATURE.

3. IF, HOWEVER, THE AGGRIEVED PERSONS ATTEMPT TO FILE GRIEVANCES UNDER THE COLLECTIVE AGREEMENT ABOVE REFERRED TO AND LOCAL 206 REFUSES TO PROCESS THEIR GRIEVANCES OR IF IT CAN BE ESTABLISHED THAT THERE HAS BEEN A BREACH OF DUTY OF GOOD FAITH REPRESENTATION BY LOCAL 206 OR IF IT CAN BE ESTABLISHED THAT LOCAL 206 AND THE RESPONDENT HAVE ENGAGED IN COLLUSION OR CONNIVANCE WITH RESPECT TO THE ACTIONS TAKEN BY THE RESPONDENT, THIS BOARD MAY (ALTHOUGH WE HAVE NOT SO DECIDED) ENTERTAIN THIS COMPLAINT PURSUANT TO THE PROVISIONS OF SECTION 79 OF THE ACT. HOWEVER, UNTIL SUCH TIME AS THE ABOVE EVENTS OR EVENTS OF A SIMILAR NATURE HAVE TAKEN PLACE, THE COMPLAINT BY THE COMPLAINANT IN THIS MATTER IS PREMATURE AND CANNOT BE ENTERTAINED.

4. THIS COMPLAINT IS THEREFORE DISMISSED.

1705-71-R: THE CANADIAN LABOUR CONGRESS REPRESENTATIVE'S UNION (APPLICANT) V. THE CANADIAN LABOUR CONGRESS (RESPONDENT).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND F. W. MURRAY.

DECISION OF THE BOARD: MARCH 9, 1972.

1. THE APPLICANT HAS APPLIED TO BE CERTIFIED AS BARGAINING AGENT FOR ALL PERMANENT REPRESENTATIVES AND TRAVELLING AUDITORS OF THE CANADIAN LABOUR CONGRESS. THE APPLICANT IS CURRENTLY PARTY TO A COLLECTIVE AGREEMENT WITH THE RESPONDENT WHICH BECAME EFFECTIVE ON JULY 1, 1970 AND REMAINS IN EFFECT UNTIL JUNE 30, 1972. THE APPLICANT HAS HAD A CONTINUOUS BARGAINING RELATIONSHIP WITH THE RESPONDENT FOR SOME YEARS. THE RECOGNITION CLAUSE OF THE COLLECTIVE AGREEMENT BETWEEN THE PARTIES READS AS FOLLOWS: "THE CONGRESS AGREES TO RECOGNIZE THE UNION AS THE EXCLUSIVE BARGAINING AGENCY FOR ALL PERMANENT REPRESENTATIVES AND TRAVELLING AUDITORS OF THE CONGRESS".

2. FOR THE REASONS GIVEN IN THE NORTHERN ELECTRIC COMPANY LIMITED CASE, 63 CLLC ¶16,288, AND IN THE LOBLAW GROCETERIAS COMPANY LIMITED, HAMILTON, ONTARIO CASE, (1944) D.L.S. 7-1115, 46 CLLC ¶16,411, THE BOARD

FINDS THAT NO PURPOSE WOULD BE SERVED BY PROCESSING THIS APPLICATION FURTHER DUE TO THE FACT THAT A CERTIFICATE OF THE BOARD CANNOT ADD ONE iota OF LEGALITY OR SANCTION TO THE BARGAINING RELATIONSHIP BETWEEN THE PARTIES, NOR CAN IT ADD MORE STATUS TO THE APPLICANT AS BARGAINING AGENT. THE BARGAINING RIGHTS FLOWING FROM THE COLLECTIVE AGREEMENT ARE OF EQUAL WEIGHT TO THE BARGAINING RIGHTS WHICH WOULD FLOW FROM A CERTIFICATE OF THE BOARD IN THE CIRCUMSTANCES OF THIS CASE.

3. IN VIEW OF THESE CIRCUMSTANCES AND IN ACCORDANCE WITH THE PROVISIONS OF SECTION 46 OF THE BOARD'S RULES OF PROCEDURE, THE BOARD IS OF OPINION THAT THE APPLICANT HAS FAILED TO MAKE A PRIMA FACIE CASE FOR THE REMEDY REQUESTED AND THE APPLICATION IS THEREFORE DISMISSED.

1533-71-R: NATIONAL ASSOCIATION OF BROADCAST EMPLOYEES AND TECHNICIANS AFL CIO CLC (APPLICANT) v. BARRIE CABLE TV LIMITED (RESPONDENT).

BEFORE: FRANK V. BOSCARIOL, VICE-CHAIRMAN AND BOARD MEMBERS O. HODGES AND J.E.C. ROBINSON, Q.C.

APPEARANCES AT THE HEARING: B. CHERCOVER, BRYON LOWE AND RICHARD WOOD FOR THE APPLICANT; J. C. MURRAY AND D. ZIMMERMAN FOR THE RESPONDENT.

DECISION OF THE BOARD: MARCH 13, 1972.

1. THE NAME "ICW INDUSTRIES LIMITED AND COUNTRYSIDE HOLDINGS LIMITED AND BARRIE TV LIMITED" APPEARING IN THE STYLE OF CAUSE OF THIS APPLICATION AS THE NAME OF THE RESPONDENT IS AMENDED TO READ: "BARRIE CABLE TV LIMITED."

2. IN THIS APPLICATION FOR CERTIFICATION, THE APPLICANT SEEKS BARGAINING RIGHTS ON BEHALF OF A TECHNICAL UNIT OF EMPLOYEES OF THE RESPONDENT IN BARRIE ENGAGED IN THE SETTING UP, OPERATION, INSTALLATION AND MAINTENANCE OF EQUIPMENT ASSOCIATED WITH THE OPERATION OF CABLE T.V. SYSTEMS.

3. AT THE HEARING OF THIS MATTER ON FEBRUARY 22, 1972, THE RESPONDENT SUBMITTED THAT THE BOARD HAS NO JURISDICTION TO ENTERTAIN THIS APPLICATION ON THE BASIS THAT ITS CABLE T.V. OPERATIONS ARE WITHIN THE EXCLUSIVE JURISDICTION OF THE PARLIAMENT OF CANADA.

4. UPON HEARING THE EVIDENCE ADDUCED IN THIS REGARD AND TAKING INTO ACCOUNT THE REPRESENTATIONS OF THE PARTIES THERETO, WE FIND THAT THE SITUATION IS SIMILAR TO THAT DESCRIBED IN TWO PREVIOUS DECISIONS OF THIS BOARD. (IN THIS REGARD, SEE THE GRAND RIVER CABLE T.V. LIMITED CASES OLRB M.R. JUNE, 1969 AT PAGES 369 AND 380, RESPECTIVELY).

5. ACCORDINGLY, WE ARE OF THE OPINION THAT THE BOARD HAS NO JURISDICTION IN THE CIRCUMSTANCES AND THESE PROCEEDINGS ARE THEREFORE TERMINATED.

1368-71-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. H. J. MCFARLAND CONSTRUCTION COMPANY LIMITED (RESPONDENT).

BEFORE: O.B. SHIME, VICE-CHAIRMAN, AND BOARD MEMBERS O. HODGES AND J.E.C. ROBINSON, Q.C.

DECISION OF THE BOARD: MARCH 15, 1972.

1. IN THIS MATTER A VOTE WAS ORDERED ON JANUARY 17, 1972, AND HELD ON FEBRUARY 9, 1972. IN OUR DECISION OF JANUARY 17 WE FOUND THE VOTING CONSTITUENCY (AND ALSO THE APPROPRIATE BARGAINING UNIT) TO BE "ALL EMPLOYEES OF THE RESPONDENT IN ITS QUARRY OPERATION" WITH CERTAIN EXCEPTIONS WHICH INCLUDED PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE NATIONAL CAPITAL ROAD-BUILDERS ASSOCIATION AND A COUNCIL OF TRADE UNIONS. WE FURTHER ORDERED THAT THE REPRESENTATION VOTE WOULD BE TAKEN OF ALL THE EMPLOYEES OF THE RESPONDENT IN THE VOTING CONSTITUENCY ON JANUARY 17, 1972, WHO DID NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO WERE NOT DISCHARGED FOR CAUSE BETWEEN JANUARY 17, 1972 AND THE DATE THE VOTE WAS TAKEN.

2. IT APPEARED THAT MR. PETER WEBB IS AN EMPLOYEE OF THE RESPONDENT WHO DIVIDED HIS TIME BETWEEN THE BARGAINING UNIT COVERED BY THE SUBSISTING COLLECTIVE AGREEMENT REFERRED TO AND THE VOTING CONSTITUENCY. ON THE ONE HAND MR. WEBB WAS ENTITLED TO VOTE AS A RESULT OF OUR ENDORSEMENT WHICH PERMITTED, "ALL EMPLOYEES...IN THE BARGAINING UNIT ON JANUARY 17" TO VOTE. ON THE OTHER HAND IT APPEARED THAT MR. WEBB WAS PREVENTED FROM VOTING BECAUSE HE ALSO FELL WITHIN THE CLASS OF PERSONS EXCLUDED FROM THE VOTING CONSTITUENCY BECAUSE THEY WERE "COVERED BY A SUBSISTING COLLECTIVE AGREEMENT". HOWEVER, MR. WEBB WAS PERMITTED TO CAST THE BALLOT AND HIS BALLOT WAS SEGREGATED.

3. AS A RESULT OF INQUIRIES BY THE REGISTRAR THE BOARD WAS ADVISED BY THE PARTIES THAT ON JANUARY 17, THE DAY THE VOTE WAS ORDERED, MR. WEBB WORKED IN THE VOTING CONSTITUENCY AND NOT IN THE BARGAINING UNIT COVERED BY THE COLLECTIVE BARGAINING, AND IN THE CIRCUMSTANCES THEREFORE IT IS DETERMINED THAT MR. WEBB BE PERMITTED TO VOTE AND THAT HIS BALLOT BE PLACED IN THE BALLOT BOX WITH THE REMAINING BALLOTS.

4. THE REGISTRAR IS DIRECTED TO COUNT THE BALLOTS CASE IN THE REPRESENTATION VOTE AND TO REPORT TO THE BOARD.

1679-71-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) V. WER-
LICH INDUSTRIES LIMITED (RESPONDENT).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS F. W. MURRAY AND P. J. O'KEEFFE.

DECISION OF THE BOARD:

MARCH 15, 1972.

1. THE NAME "THE LEISURE GROUP (WERLICH INDUSTRIES LIMITED)" APPEARING IN THE STYLE OF CAUSE OF THIS APPLICATION AS THE NAME OF THE RESPONDENT IS AMENDED TO READ: "WERLICH INDUSTRIES LIMITED".
2. THE APPLICANT HAS REQUESTED THAT A PRE-HEARING REPRESENTATION VOTE BE TAKEN.
3. IT APPEARS TO THE BOARD ON AN EXAMINATION OF THE RECORDS OF THE APPLICANT AND THE RECORDS OF THE RESPONDENT THAT NOT LESS THAN THIRTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE VOTING CONSTITUENCY HEREINAFTER DESCRIBED WERE MEMBERS OF THE APPLICANT AT THE TIME THE APPLICATION WAS MADE.
4. THE BOARD DIRECTS THAT A PRE-HEARING REPRESENTATION VOTE BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN THE FOLLOWING VOTING CONSTITUENCY:

ALL EMPLOYEES OF THE RESPONDENT AT STRATFORD, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD.
5. ALL EMPLOYEES OF THE RESPONDENT IN THE VOTING CONSTITUENCY ON THE 9TH DAY OF MARCH, 1972 WHO HAVE NOT VOLUNTARILY TERMINATED THEIR EMPLOYMENT OR WHO HAVE NOT BEEN DISCHARGED FOR CAUSE BETWEEN THE 9TH DAY OF MARCH, 1972 AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.
6. THERE WAS A DISPUTE BETWEEN THE PARTIES WITH RESPECT TO WHETHER THE TWENTY-FOUR PERSONS WHO ARE LISTED BY THE RESPONDENT ON SCHEDULE "C" SHOULD BE INCLUDED IN THE VOTING CONSTITUENCY FOR THE PURPOSE OF DETERMINING THE APPLICANT'S MEMBERSHIP POSITION. SINCE ALL TWENTY-FOUR PERSONS HAD BEEN LAID OFF BY THE RESPONDENT FOR A PERIOD IN EXCESS OF THIRTY DAYS PRIOR TO THE DATE THIS APPLICATION WAS MADE, WE FIND THAT SUCH PERSONS ARE NOT ELIGIBLE TO BE CONSIDERED EMPLOYEES OF THE RESPONDENT WHO WOULD BE INCLUDED IN THE VOTING CONSTITUENCY ON THE DATE THIS APPLICATION WAS MADE FOR THE PURPOSE OF DETERMINING THE APPLICANT'S MEMBERSHIP POSITION.

7. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BE REPRESENTED BY THE APPLICANT IN THEIR EMPLOYMENT RELATIONS WITH THE RESPONDENT.

8. THE MATTER IS REFERRED TO THE REGISTRAR.

1423-71-JD: ELLIS DON LIMITED (COMPLAINANT) V. ACME LATHING CO. LTD.; EASTWAY CONTRACTING COMPANY; CARPENTERS' DISTRICT COUNCIL OF TORONTO AND VICINITY, ON BEHALF OF LOCAL UNIONS 27, 666, 681, 1133, 1747, 1963, 3227 AND 3233 OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA; LOCAL 97, WOOD, WIRE AND METAL LATHERS INTERNATIONAL UNION; LOCAL 562, WOOD, WIRE, AND METAL LATHERS INTERNATIONAL UNION (RESPONDENTS).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND P. J. O'KEEFE.

APPEARANCES AT THE HEARING: D. J. MCKILLOP, Q.C., AND C. BECHLER FOR THE COMPLAINANT; R. D. PERKINS AND S. SOSIN FOR THE RESPONDENT COMPANIES; L. A. MACLEAN AND F. LEGER FOR THE RESPONDENT CARPENTERS UNIONS; A. M. MINSKY AND G. SIMONE FOR THE RESPONDENT LATHERS UNIONS.

DECISION OF THE BOARD: MARCH 14, 1972.

1. THE NAME "EASTWAY CONTRACTING COMPANY LIMITED" APPEARING IN THE STYLE OF CAUSE OF THIS COMPLAINT AS THE NAME OF THE RESPONDENT COMPANY IS AMENDED TO READ: "EASTWAY CONTRACTING COMPANY".

2. THE COMPLAINANT IS REQUESTING THAT THE BOARD ISSUE A DIRECTIVE UNDER SECTION 81 OF THE ACT ASSIGNING TO THE CARPENTERS THE INSTALLATION OF DRYWALL SYSTEMS AND DIRECT-HUNG GRID CEILING SYSTEMS WHICH WORK IS BEING PERFORMED ON THE THOMPSON BUILDING CONSTRUCTION PROJECT AT 65 QUEEN STREET WEST IN THE CITY OF TORONTO.

3. THE COMPLAINANT WAS AWARDED THE GENERAL CONTRACT ON THE ABOVE PROJECT BY AFFILIATED REALTY CORPORATION LIMITED OPERATING UNDER THE TRADE NAME OF DENNIS COMMERCIAL PROPERTIES BY A CONTRACT DATED APRIL 23, 1968. BY LETTER DATED JUNE 26, 1970 ACME LATHING CO. LTD. (HEREINAFTER REFERRED TO AS ACME) SUBMITTED TO THE COMPLAINANT A BID IN THE AMOUNT OF \$134,465.00 FOR THE SUPPLY OF THE MATERIALS AND THE INSTALLATION OF ALL DRYWALL WORK ON THE THOMPSON BUILDING, WHICH IS THE WORK THAT IS THE SUBJECT-MATTER OF THE COMPLAINT. THE COMPLAINANT ACCEPTED THE BID MADE BY ACME. ACCORDING TO THE EVIDENCE OF PETER MINGO, THE SENIOR PROJECT MANAGER OF THE COMPLAINANT, AT THE REQUEST OF MR. N. KANNER, THE PRESIDENT OF ACME, EASTWAY CONTRACTING COMPANY (HEREINAFTER REFERRED TO AS EASTWAY) WAS NAMED AS THE PARTY TO THE SUB-CONTRACT WITH THE COMPLAINANT. THE EVIDENCE IS THAT EASTWAY IS A WHOLLY OWNED SUBSIDIARY OF ACME AND MR. KANNER IS THE SENIOR OFFICIAL

OF BOTH COMPANIES. MR. MINGO TESTIFIED THAT WHILE THE SUB-CONTRACT IS DATED JUNE 26, 1970 IT WAS NOT EXECUTED BY THE PARTIES, I.E. THE COMPLAINANT, EASTWAY AND THE OWNER, UNTIL SOME TIME BETWEEN SEPTEMBER 9TH AND 14TH, 1970. ONE OF THE TERMS OF THE CONTRACT WAS THAT THE WORK WAS TO BE COMPLETED BY MAY 1, 1971 OR AS DIRECTED BY THE COMPLAINANT. ATTACHED TO THE ORIGINAL CONTRACT AGREEMENT, WHICH WAS FILED WITH THE BOARD, BETWEEN THE COMPLAINANT AND EASTWAY IS A LETTER ON THE STATIONARY OF ACME ADDRESSED TO AFFILIATED REALTY CORPORATION LTD. IN CARE OF THE COMPLAINANT, SIGNED BY MR. KANNER AS PRESIDENT OF ACME. BY THIS LETTER ACME GUARANTEED THE COMPLETION AND PERFORMANCE OF THE CONTRACT OF EASTWAY. THE EVIDENCE OF PETER MINGO IS THAT THE COMPLAINANT REQUIRED THE ABOVE GUARANTEE FROM ACME BECAUSE OF MISGIVINGS ON THE PART OF THE COMPLAINANT AS TO THE ABILITY OF EASTWAY TO PERFORM THE CONTRACT.

4. AT THE TIME THE AGREEMENT BETWEEN THE COMPLAINANT AND EASTWAY WAS EXECUTED, THE COMPLAINANT WAS BOUND BY A COLLECTIVE AGREEMENT BETWEEN THE GENERAL CONTRACTORS SECTION OF THE TORONTO CONSTRUCTION ASSOCIATION AND THE CARPENTERS DISTRICT COUNCIL OF TORONTO AND VICINITY, THE DURATION OF WHICH WAS FROM JULY 14, 1969 TO APRIL 30, 1971, AND FROM YEAR TO YEAR THEREAFTER SUBJECT TO NOTICE. BY ARTICLE 2 OF THAT COLLECTIVE AGREEMENT, THE COMPLAINANT AGREED TO ENGAGE ONLY SUB-CONTRACTORS WHO EMPLOYED MEMBERS OF THE CARPENTERS UNION. ACCORDING TO MR. MINGO, BECAUSE OF THE FOREGOING PROVISION, THE COMPLAINANT REQUIRED EASTWAY TO SHOW THAT IT HAD A COLLECTIVE AGREEMENT WITH THE CARPENTERS UNION. TO MEET THIS REQUIREMENT, EASTWAY ENTERED INTO A MEMORANDUM OF AGREEMENT WITH LOCAL 1747 OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA DATED AUGUST 21, 1970. BY THE TERMS OF THE MEMORANDUM, EASTWAY AGREED TO EMPLOY ONLY MEMBERS OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA ON ANY COMMERCIAL WORK AND THAT IT WOULD COMPLY WITH THE TERMS AND CONDITIONS OF THE COLLECTIVE AGREEMENT IN EFFECT BETWEEN THE GENERAL CONTRACTORS SECTION OF THE TORONTO CONSTRUCTION ASSOCIATION AND THE CARPENTERS DISTRICT COUNCIL OF TORONTO AND VICINITY. THE MEMORANDUM FURTHER PROVIDED THAT THE ABOVE UNDERSTANDING WAS TO REMAIN IN EFFECT BETWEEN THE PARTIES FOR A PERIOD OF ONE YEAR, OR UNTIL REPLACED BY A FORMAL AGREEMENT. WE WOULD MENTION HERE THAT ACME, WHICH GUARANTEED THE PERFORMANCE OF THE CONTRACT, ONLY EMPLOYED MEMBERS OF LOCAL 562 OF THE WOOD, WIRE AND METAL LATHERS INTERNATIONAL UNION AND HAS NEVER EMPLOYED CARPENTERS. WE ARE SATISFIED THAT THIS FACT WAS KNOWN TO THE COMPLAINANT SINCE THE COMPLAINANT HAD PREVIOUSLY SUB-CONTRACTED DRYWALL WORK TO ACME ON THE SHAW AND BEGG BUILDING PROJECT AT 350 BLOOR STREET EAST IN TORONTO AND AS LATE AS FEBRUARY OF 1971 ACME WAS PERFORMING WORK UNDER THIS SUB-CONTRACT WITH THE COMPLAINANT.

5. IT APPEARS THAT EASTWAY AT NO TIME DID ANY OF THE WORK ON THE THOMPSON BUILDING WHICH IT UNDERTOOK IN ITS SUB-CONTRACT WITH THE

COMPLAINANT DATED JUNE 26, 1970. BY LETTER DATED FEBRUARY 4, 1971, MR. KANNER, AS PRESIDENT OF ACME, WROTE TO THE COMPLAINANT. THE BODY OF THE LETTER READS: "SINCE EASTWAY CONTRACTING COMPANY WAS UNABLE TO UNDERTAKE THE ABOVE MENTIONED PROJECT, ACME LATHING CO. LTD. AS INDICATED IN THE LETTER TO YOUR COMPANY DATED JUNE 26/70, SHALL GUARANTEE THE PERFORMANCE AND COMPLETION OF THE CONTRACT." IT APPEARS THAT SOME TIME IN FEBRUARY OF 1971 ACME TOOK OVER THE CONTRACT OF EASTWAY AND PROCEEDED TO INSTALL THE DRYWALL AND DIRECT-HUNG GRID CEILING SYSTEMS, USING LATHERS TO PERFORM THE WORK. FURTHER, IT APPEARS THAT BY THE END OF JUNE OF 1971 ACME HAD COMPLETED THE SAID WORK TO BE MONETARY VALUE OF THE CONTRACT BETWEEN THE COMPLAINANT AND EASTWAY AND THAT BY EARLY JULY THE COMPLAINANT HAD PAID THE FULL AMOUNT OF THE CONTRACT PRICE TO ACME. ACCORDING TO THE EVIDENCE, ACME IS STILL DOING DRYWALL WORK WHICH IS THE SUBJECT-MATTER OF THE INSTANT COMPLAINT ON THE THOMPSON BUILDING, USING LATHERS TO DO THE WORK, BUT THIS IS ADDITIONAL WORK BEING DONE ON A COST-PLUS BASIS AS A RESULT OF CERTAIN CHANGES THAT WERE MADE IN THE PLANS AND SPECIFICATIONS FOR THE BUILDING.

6. ON MARCH 11, 1971, APPROXIMATELY A MONTH AFTER ACME COMMENCED TO PERFORM THE DRYWALL WORK COVERED BY THE CONTRACT BETWEEN THE COMPLAINANT AND EASTWAY USING LATHERS TO DO THE WORK, FRED LEGER, BUSINESS REPRESENTATIVE FOR THE CARPENTERS DISTRICT COUNCIL OF TORONTO AND VICINITY, WROTE TO THE COMPLAINANT TO THE ATTENTION OF MR. MINGO. BY THE SAID LETTER, MR. LEGER FILED A GRIEVANCE WITH THE COMPLAINANT ALLEGING THAT THE COMPLAINANT HAD VIOLATED ARTICLE 2 OF ITS COLLECTIVE AGREEMENT WITH THE CARPENTERS UNION BY USING A SUB-CONTRACTOR, I.E. ACME, WHO WAS NOT EMPLOYING CARPENTERS, TO INSTALL DRYWALL AND DIRECT-HUNG GRID CEILING SYSTEMS ON THE THOMPSON BUILDING. NOT ONLY DID MR. LEGER ALLEGE THAT THE COMPLAINANT HAD ACTED IN CONTRAVENTION OF ITS COLLECTIVE AGREEMENT BUT ALSO HE ALLEGED THAT THE WORK INVOLVED FELL WITHIN THE WORK JURISDICTION OF THE CARPENTERS. BY LETTER DATED MARCH 24, 1971, MR. MINGO WROTE TO EASTWAY TO THE ATTENTION OF MR. N. KANNER ADVISING HIM THAT THE COMPLAINANT WAS HOLDING EASTWAY LIABLE FOR ALL COSTS AND OTHER BURDENS SUFFERED BY THE COMPLAINANT AND/OR THE OWNERS, DUE TO EASTWAY'S APPARENT ASSIGNMENT OF THE CONTRACT AGREEMENT TO ACME, WHICH ACCORDING TO MINGO WAS NOT IN ACCORDANCE WITH EASTWAY'S CONTRACT WITH THE COMPLAINANT.

7. NOTWITHSTANDING THE FILING OF THE GRIEVANCE AND MR. MINGO'S LETTER OF MARCH 24, 1971 TO MR. KANNER, ACME CONTINUED TO DO THE SAID WORK AND COMPLETED THE EASTWAY CONTRACT USING LATHERS. WE WOULD MENTION THAT ACCORDING TO THE EVIDENCE, AS OF DECEMBER 31, 1971, THE DATE OF THE FILING OF THE INSTANT COMPLAINT, THERE HAD BEEN NO SETTLEMENT OR DETERMINATION BY WAY OF THE GRIEVANCE PROCEDURE OR ARBITRATION OF THE GRIEVANCE FILED BY THE CARPENTERS WITH THE COMPLAINANT ON MARCH 11, 1971.

8. COUNSEL FOR THE CARPENTERS DISTRICT COUNCIL OF TORONTO AND VICINITY SUBMITS THAT THE COMPLAINT DOES NOT FALL WITHIN THE PURVIEW OF SUBSECTION (1) OF SECTION 81 OF THE ACT FOR THE FOLLOWING REASONS: (1) THE SAID COMPLAINANT IS NOT THE EMPLOYER WHO MADE THE WORK ASSIGNMENT WHICH IS THE SUBJECT-MATTER OF THE COMPLAINT. (2) THE CARPENTERS, ALTHOUGH THEY CLAIM JURISDICTION OVER THE WORK THAT IS THE SUBJECT-MATTER OF THE COMPLAINT, ARE NOT REQUIRING THE COMPLAINANT TO ASSIGN THE WORK TO THEM. RATHER, THE CARPENTERS ALLEGE THAT THE COMPLAINANT HAS ACTED IN BREACH OF ITS COLLECTIVE AGREEMENT WITH THE CARPENTERS AND THEY ARE SEEKING THEIR REMEDY BY WAY OF THE GRIEVANCE PROCEDURE UNDER THEIR COLLECTIVE AGREEMENT WITH THE COMPLAINANT. ACCORDINGLY, IT CANNOT BE SAID THAT THERE IS A WORK ASSIGNMENT DISPUTE WITHIN THE MEANING OF SUBSECTION (1) OF SECTION 81. IN THE ALTERNATIVE, COUNSEL SUBMITS THAT EVEN IF THE BOARD WERE TO FIND THAT THERE IS A WORK ASSIGNMENT DISPUTE AND THAT THE COMPLAINANT IS ENTITLED TO MAKE THE COMPLAINT UNDER SUBSECTION (1) OF SECTION 81, THE BOARD, IN THE EXERCISE OF ITS DISCRETION, SHOULD DECLINE TO DEAL WITH THE COMPLAINT FOR THE FOLLOWING REASONS: (1) THE WORK ASSIGNMENT DISPUTE AROSE WHEN THE THE CARPENTERS FILED THEIR GRIEVANCE ON MARCH 11, 1971, NEARLY NINE MONTHS PRIOR TO THE FILING OF THE INSTANT COMPLAINT. (2) THE WORK ON THE CONTRACT WHICH GAVE RISE TO THE DISPUTE WAS COMPLETED BY THE END OF JUNE 1971, SIX MONTHS PRIOR TO THE FILING OF THE COMPLAINT.

9. COUNSEL FOR THE COMPLAINANT, COUNSEL FOR THE RESPONDENT COMPANIES AND COUNSEL FOR THE LATHERS SUBMIT THAT THERE IS A WORK ASSIGNMENT DISPUTE BETWEEN THE CARPENTERS AND LATHERS WITHIN THE MEANING OF SUBSECTION (1) OF SECTION 81. COUNSEL FURTHER SUBMIT THAT THE COMPLAINANT IS AN EMPLOYER WHOSE INTERESTS ARE BEING AFFECTED BY THE DISPUTE AND THERE IS NO LIMITATION IN THE LANGUAGE OF SUBSECTION (1) WHICH CONSTITUTES A BAR TO THE FILING OF THE INSTANT COMPLAINT BY THE COMPLAINANT. COUNSEL ACCORDINGLY ARGUE THAT THE BOARD HAS JURISDICTION TO DEAL WITH THE COMPLAINT AND HAVING REGARD TO THE ISSUES INVOLVED, IN THE EXERCISE OF ITS DISCRETION, SHOULD ENTERTAIN AND MAKE A DETERMINATION ON THE COMPLAINT.

10. SUBSECTION (1) OF SECTION 81 OF THE ACT READS:

THE BOARD MAY INQUIRE INTO A COMPLAINT THAT A TRADE UNION OR COUNCIL OF TRADE UNIONS, OR AN OFFICIAL OR AGENT OF A TRADE UNION OR COUNCIL OF TRADE UNIONS, WAS OR IS REQUIRING AN EMPLOYER OR AN EMPLOYERS' ORGANIZATION TO ASSIGN PARTICULAR WORK TO PERSONS IN A PARTICULAR TRADE UNION OR IN A PARTICULAR TRADE, CRAFT OR CLASS RATHER THAN TO PERSONS IN ANOTHER TRADE UNION OR IN ANOTHER TRADE, CRAFT OR CLASS, OR THAT AN EMPLOYER WAS OR IS ASSIGNING WORK TO PERSONS IN A PARTICULAR TRADE

UNION RATHER THAN TO PERSONS IN ANOTHER TRADE UNION, AND IT SHALL DIRECT WHAT ACTION, IF ANY, THE EMPLOYER, THE EMPLOYERS' ORGANIZATION, THE TRADE UNION OR THE COUNCIL OF TRADE UNIONS OR ANY OFFICER, OFFICIAL OR AGENT OF ANY OF THEM OR ANY PERSON SHALL DO OR REFRAIN FROM DOING WITH RESPECT TO THE ASSIGNMENT OF WORK.

BRIEFLY, THEN, A WORK ASSIGNMENT DISPUTE CAN ARISE IN ONE OF TWO WAYS. (1) WHERE A TRADE UNION REQUIRES AN EMPLOYER TO ASSIGN WORK TO PERSONS IN A PARTICULAR TRADE UNION RATHER THAN TO PERSONS IN ANOTHER TRADE UNION, AND (2) WHERE AN EMPLOYER ASSIGNS WORK TO PERSONS IN A PARTICULAR TRADE UNION RATHER THAN TO PERSONS IN ANOTHER TRADE UNION.

11. WE NOTE THAT UNLIKE SECTION 123 OF THE ACT, SUBSECTION (1) OF SECTION 81 DOES NOT SPECIFICALLY PROVIDE THAT THE BOARD MAY INQUIRE INTO A COMPLAINT "OF AN INTERESTED PARTY". BE THAT AS IT MAY, LET US ASSUME FOR PURPOSES OF ARGUMENT, BUT WITHOUT SO FINDING, THAT ELLIS DON LIMITED IS A PARTY WHICH CAN MAKE THE INSTANT COMPLAINT. BASED ON THE EVIDENCE BEFORE US, ONLY ACME QUALIFIES AS "AN EMPLOYER" WITHIN THE MEANING OF THE SAID SUBSECTION SINCE IT IS THE EMPLOYER WHO ASSIGNED THE WORK WHICH IS THE SUBJECT-MATTER OF THE COMPLAINT. ACME, HOWEVER, WAS NOT REQUIRED BY A TRADE UNION TO ASSIGN PARTICULAR WORK TO PERSONS IN A PARTICULAR TRADE UNION RATHER THAN TO PERSONS IN ANOTHER TRADE UNION AND DID NOT OF ITS OWN INITIATIVE ASSIGN PARTICULAR WORK TO PERSONS IN A PARTICULAR TRADE UNION RATHER THAN TO PERSONS IN ANOTHER TRADE UNION. MORE SPECIFICALLY, ACME ASSIGNED THE WORK INVOLVED IN THE INSTALLATION OF DRYWALL SYSTEMS AND DIRECT-HUNG GRID CEILING SYSTEMS ON THE THOMPSON BUILDING TO PERSONS IN ITS EMPLOY WHO ARE LATHERS. BUT ACME CANNOT BE SAID TO HAVE ASSIGNED THE WORK TO LATHERS RATHER THAN CARPENTERS SINCE THE RESPONDENT CARPENTERS AT NO TIME ADVISED ACME THAT THEY CLAIMED JURISDICTION OVER THE SAID WORK AND IN NO MANNER SOUGHT TO REQUIRE ACME TO ASSIGN THE WORK TO MEMBERS OF THEIR CRAFT. MOREOVER, THE COMPLAINANT, ELLIS DON LIMITED, AT NO TIME AND IN NO MANNER SOUGHT TO REQUIRE ACME TO ASSIGN THE SAID WORK TO CARPENTERS RATHER THAN LATHERS. THIS BEING SO, IN FACT, THERE IS NO WORK ASSIGNMENT DISPUTE WITHIN THE MEANING OF SUBSECTION (1) OF SECTION 81 OF THE ACT. THE BOARD THEREFORE IS WITHOUT JURISDICTION TO ENTERTAIN THE INSTANT COMPLAINT.

12. THE COMPLAINT ACCORDINGLY IS DISMISSED.

787-71-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 1669 (APPLICANT) v. TIP TOP RUBBER DISTRIBUTORS - INDUSTRIAL DIVISION (RESPONDENT).

BEFORE: R.A. FURNESS, VICE CHAIRMAN AND BOARD MEMBERS E. BOYER AND H.F. IRWIN.

DECISION OF THE BOARD:

MARCH 15, 1972.

1. THE NAME "TIP TOP RUBBER" APPEARING IN THE STYLE OF CAUSE OF THIS APPLICATION AS THE NAME OF THE RESPONDENT IS AMENDED TO READ: "TIP TOP RUBBER DISTRIBUTORS - INDUSTRIAL DIVISION".
2. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(N) OF THE LABOUR RELATIONS ACT.
3. THE BOARD FURTHER FINDS THAT THIS IS AN APPLICATION FOR CERTIFICATION WITHIN THE MEANING OF SECTION 108 OF THE LABOUR RELATIONS ACT.
4. IN THIS APPLICATION FOR CERTIFICATION THE APPLICANT IS SEEKING CERTIFICATION ON BEHALF OF A UNIT OF EMPLOYEES DESCRIBED AS:

"ALL MILLWRIGHTS AND THEIR APPRENTICES
IN THE DISTRICT OF RAINY RIVER, ONTARIO."
5. IN ADDITION, THE APPLICANT, IN A LETTER TO THE BOARD, RESERVED THE RIGHT TO REQUEST THE BOARD, PURSUANT TO SECTION 1(4) OF THE LABOUR RELATIONS ACT, TO TREAT REMA TIP TOP RUBBER DIV. OF FRANK R. MOSER LTD.; REMA TIP TOP RUBBER C.M. SERVICE LTD.; TIP TOP RUBBER DISTRIBUTORS INDUSTRIAL DIV. CONV. BELT MAINT. SERVICE LTD. AS CONSTITUTING ONE EMPLOYER FOR THE PURPOSES OF THE LABOUR RELATIONS ACT.
6. THE BOARD HAS CONSIDERED THE REPORT OF THE EXAMINER IN THIS MATTER DATED NOVEMBER 18, 1971 AND THE REPRESENTATIONS OF THE PARTIES THEREON.
7. ON THE BASIS OF THE EVIDENCE BEFORE IT, THE BOARD FINDS THAT THE EMPLOYEES ON WHOSE BEHALF THE APPLICANT FILED EVIDENCE OF MEMBERSHIP WERE EMPLOYED BY THE RESPONDENT ON THE DATE OF THE MAKING OF THIS APPLICATION FOR CERTIFICATION.
8. THERE WAS NO EVIDENCE BEFORE THE BOARD CONCERNING THE EMPLOYMENT BY ANY OF THE OTHER ALLEGED EMPLOYERS OF MILLWRIGHTS ON OR ABOUT JULY 22, 1971, THE DATE OF THE MAKING OF THIS APPLICATION FOR CERTIFICATION. SINCE THE APPLICANT FILED EVIDENCE OF MEMBERSHIP ON BEHALF OF TWO PERSONS WHO WERE EMPLOYED BY THE RESPONDENT ON THE DATE OF THE MAKING OF THIS APPLICATION, IT IS NOT NECESSARY FOR THE BOARD, IN ALL OF THE CIRCUMSTANCES OF THIS APPLICATION, TO CONSIDER THE APPLICABILITY OF SECTION 1(4) OF THE LABOUR RELATIONS ACT TO THE FACTS OF THIS APPLICATION.

9. THE RESPONDENT IS A PARTY TO A COLLECTIVE AGREEMENT WITH THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, ON BEHALF OF ITS LOCAL UNIONS AND DISTRICT COUNCILS IN THE PROVINCE OF ONTARIO COVERING MILLWRIGHTS AND MILLWRIGHTS' APPRENTICES. THIS COLLECTIVE AGREEMENT IS DATED MAY 2, 1970 AND IS TO OPERATE FOR A PERIOD OF ONE YEAR THEREFROM AND FROM YEAR TO YEAR SUBJECT TO NOTICE. THE APPLICANT IS BOUND BY THIS COLLECTIVE AGREEMENT. THE APPLICANT ALREADY HAS BARGAINING RIGHTS FOR THE EMPLOYEES OF THE RESPONDENT AFFECTED BY THIS APPLICATION.

10. HAVING REGARD TO THE FOREGOING THIS PROCEEDING IS TERMINATED.

1552-71-R: UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL UNION 71 (APPLICANT) v. VOLCANO LIMITED (LIMITEE) (RESPONDENT).

BEFORE: R.F. EGAN, VICE CHAIRMAN AND BOARD MEMBERS J.D. BELL AND O. HODGES.

DECISION OF THE BOARD: MARCH 16, 1972.

1. THE NAME "VOLCANO LIMITED (VOLCANO LIMITEE)" APPEARING IN THE STYLE OF CAUSE OF THIS APPLICATION AS THE NAME OF THE RESPONDENT IS AMENDED TO READ: "VOLCANO LIMITED (LIMITEE)".

2. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(N) OF THE LABOUR RELATIONS ACT.

3. THE EVIDENCE OF MEMBERSHIP FILED BY THE APPLICANT CONSISTED OF PHOTOSTATIC COPIES OF APPLICATIONS FOR MEMBERSHIP IN THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA TOGETHER WITH PHOTOSTATIC COPIES OF RECEIPTS FOR THE PAYMENT OF \$5.00 TO LOCAL 71. THERE APPEARS WRITTEN ACROSS THE FACE OF THE RECEIPT THE WORD "INITIATION" IN EACH INSTANCE. THE RECEIPTS ARE NOT COUNTERSIGNED.

4. THE BOARD HAS CONSISTENTLY HELD THAT WHERE AN APPLICATION FOR CERTIFICATION IS BROUGHT IN THE NAME OF THE LOCAL THE MEMBERSHIP EVIDENCE MUST BE OF MEMBERSHIP IN THAT LOCAL AND NOT, AS IN THE PRESENT CASE, OF MEMBERSHIP IN THE PARENT BODY.

5. IN THE PRESENT CASE AS NOTED ABOVE, THE APPLICATION FOR MEMBERSHIP IS MADE TO THE PARENT BODY WHEREAS THE PAYMENT OF INITIATION FEES HAS BEEN MADE TO THE APPLICANT LOCAL UNION 71. EVEN ASSUMING THAT EVIDENCE OF MEMBERSHIP SUBMITTED BY MEANS OF PHOTOSTAT RATHER THAN THROUGH ORIGINAL DOCUMENTS WERE ACCEPTABLE BY THE BOARD, THE EVIDENCE OF MEMBERSHIP HEREIN, FOR THE REASONS SET OUT ABOVE, DOES NOT MEET THE REQUIREMENTS OF THE BOARD.

6. THE APPLICATION IS THEREFORE DISMISSED.

1475-71-U: DONALD G. GEBBIE AND J. MICHAEL LONGMOORE (COMPLAINANTS)
V. THE FORD MOTOR COMPANY OF CANADA LIMITED AND LOCAL 200 U.A.W. (RE-
SPONDENTS).

BEFORE: G. W. REED, Q.C., AND BOARD MEMBERS E. BOYER AND F. W. MURRAY.

DECISION OF THE BOARD: MARCH 15, 1972.

1. ON CONSIDERING THE STATEMENTS OBTAINED BY THE FIELD OFFICER, MR. F. D. EDWARDS, IN THE COURSE OF HIS INQUIRY INTO THE COMPLAINT IN THIS MATTER, WE ARE OF THE OPINION THAT THE BOARD SHOULD INQUIRE INTO THE COMPLAINT WITH RESPECT TO DONALD G. GEBBIE AND J. MICHAEL LONGMOORE AGAINST THE RESPONDENT, LOCAL 200, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, BY MEANS OF A HEARING BY THE BOARD.

2. COUNSEL FOR THE RESPONDENT, THE FORD MOTOR COMPANY OF CANADA LIMITED, HAS SUBMITTED A LEGAL ARGUMENT ASKING THAT THE BOARD DISMISS THE COMPLAINT AGAINST THE COMPANY ON THE GROUND THAT, EVEN IF THE FACTS ALLEGED IN THE COMPLAINT WERE TRUE, WHICH IS NOT ADMITTED, THEY DO NOT DISCLOSE ANY VIOLATION OF THE LABOUR RELATIONS ACT BY THE FORD MOTOR COMPANY OF CANADA LIMITED. COUNSEL FOR THE COMPLAINANTS WAS PROVIDED WITH A COPY OF THE ARGUMENT OF COUNSEL FOR THE COMPANY BUT HAS DECLINED TO ANSWER THE ARGUMENT ON THE GROUND THAT NO SUCH ACTION SHOULD BE TAKEN BY THE BOARD WITHOUT A HEARING, AT WHICH TIME ALL PARTIES WOULD BE AFFORDED AN OPPORTUNITY TO CALL EVIDENCE AND MAKE FULL ARGUMENT TO THE BOARD.

3. IN SOME INSTANCES IN THE PAST THE BOARD HAS DISMISSED A COMPLAINT FOLLOWING THE REPORT OF THE FIELD OFFICER ON THE GROUND THAT THE COMPLAINT DID NOT MAKE OUT A PRIMA FACIE CASE FOR THE REMEDY REQUESTED. SEE SECTION 46 OF THE BOARD'S RULES OF PROCEDURE. IN THE PRESENT CASE THE COMPLAINANTS ARE ALLEGING THAT THE RESPONDENT TRADE UNION HAS ACTED CONTRARY TO SECTION 60 OF THE LABOUR RELATIONS ACT IN ITS FAILURE TO PROCESS GRIEVANCES ARISING OUT OF THE DISCHARGE OF THE COMPLAINANTS. THE COMPLAINT AGAINST THE RESPONDENT COMPANY IS THAT IT ACTED IN A DISCRIMINATORY AND ARBITRARY MANNER IN DECLARING THE COMPLAINANTS TO BE IN BREACH OF THE PROVISIONS OF A COLLECTIVE BARGAINING AGREEMENT AND DISCHARGING THEM. THE COMPLAINANTS APPEAR TO RELY ON SECTION 37 AND CLAUSE (A) OF SECTION 58. THE COMPLAINANTS ARE SEEKING REINSTATEMENT IN THEIR EMPLOYMENT. THERE ARE ALLEGATIONS THAT THE RESPONDENT COMPANY HAD NO RIGHT TO DECIDE UNILATERALLY THAT A VIOLATION OF THE COLLECTIVE AGREEMENT HAD TAKEN PLACE AND THAT THE DISCHARGE RESULTED FROM A PRIVATE AGREEMENT BETWEEN THE RESPONDENT COMPANY AND THE RESPONDENT TRADE UNION. THE COMPLAINANTS ARE FURTHER

SEEKING A DECLARATION THAT THE ALLEGED PRIVATE AGREEMENT SO ENTERED INTO TO THE PREJUDICE OF THE COMPLAINANTS IS NULL AND VOID.

4. THE DUTY OF FAIR REPRESENTATION AS IMPOSED BY SECTION 60 OF THE LABOUR RELATIONS ACT IS A COMPARATIVELY NEW STATUTORY DUTY. IT SEEMS CLEAR THAT THERE ARE PROBLEMS WITH RESPECT TO THE RELIEF WHICH THE BOARD MAY GIVE UNDER THE SECTION, ASSUMING IT FINDS THAT A BREACH OF THE SECTION HAS OCCURRED. IT ALSO SEEMS CLEAR ON THE MATERIAL PRESENTLY BEFORE US THAT THE TWO COMPLAINTS IN THE PRESENT CASE ARE RELATED, AT LEAST IN THE SENSE THAT BOTH HAVE EVOLVED OUT OF A SERIES OF INTER-RELATED INCIDENTS. WHILE THE ARGUMENT SUBMITTED BY COUNSEL FOR THE RESPONDENT COMPANY APPEARS TO HAVE SOME MERIT, IN ALL THE CIRCUMSTANCES, WE ARE NOT DISPOSED TO DEPRIVE THE COMPLAINANTS OF AN OPPORTUNITY TO PRESENT THEIR CASE AGAINST THE RESPONDENT COMPANY AT A HEARING BY THE BOARD.

5. WE ARE THEREFORE OF THE OPINION THAT THE BOARD SHOULD ALSO INQUIRE INTO THE COMPLAINT OF DONALD G. GEBBIE AND J. MICHAEL LONGMOORE AGAINST THE FORD MOTOR COMPANY OF CANADA LIMITED BY MEANS OF A HEARING BY THE BOARD.

6. THE APPROPRIATE NOTICES OF HEARING WILL ISSUE.

853-71-M: CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 167 (APPLICANT)
V. THE CORPORATION OF THE CITY OF HAMILTON (RESPONDENT).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND O. HODGES.

APPEARANCES AT THE HEARING: STANLEY SIMPSON, ROBERT HAMPSON AND CHARLES MURRAY FOR THE APPLICANT, JOHN CAVARZAN AND JOHN LONGWORTH FOR THE RESPONDENT.

DECISION OF THE BOARD: MARCH 16, 1972.

1. THIS IS AN APPLICATION FOR RELIEF UNDER THE PROVISIONS OF SECTION 95(2) OF THE LABOUR RELATIONS ACT.

2. THIS APPLICATION IS WITHDRAWN WITH RESPECT TO B. KLOTZ AND J. MARSHALL AT THE REQUEST OF THE APPLICANT WITH THE CONSENT OF THE RESPONDENT BY LEAVE OF THE BOARD.

3. THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT W. ORR, E. HAVELKA AND L. BAXTER DO NOT EXERCISE MANAGERIAL FUNCTIONS AND ARE NOT EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS

ACT AND ARE EMPLOYEES OF THE RESPONDENT FOR THE PURPOSES OF THE ACT.

4. THE BOARD FURTHER NOTES THE AGREEMENT OF THE PARTIES THAT G. CUDDY, J. HINDSON, H. SCHWEINBENZ, T. PENMAN, F. WHITE, G. KOHLER, R. SUGDEN, J. MORGAN AND H. SAUNDERS EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND ARE NOT EMPLOYEES OF THE RESPONDENT FOR THE PURPOSES OF THE ACT.

5. THE BOARD ALSO NOTES THE AGREEMENT OF THE PARTIES THAT B. COOK IS EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND IS NOT AN EMPLOYEE OF THE RESPONDENT FOR THE PURPOSES OF THE ACT.

6. HAVING REGARD TO THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER DATED JANUARY 5, 1972 AND THE REPRESENTATIONS OF THE PARTIES WITH RESPECT THERETO, THE BOARD FINDS THAT J. NOBLE, E. SWAIN, D. MCAVOY, A. MARTIN, B. WALDRON, K. HAMPEL, S. TILEY, A. THORNE, D. BRUSEY, F. EDWARDS, A. WILSON, R. HOLDEN AND M. M. PLAVNIEKS, PERSONS CLASSIFIED AS SYSTEMS ANALYST, PROGRAMMER I AND PROGRAMMER II, AND JUNIOR PLANNER II, AT THE TIME THIS APPLICATION WAS MADE DID NOT EXERCISE MANAGERIAL FUNCTIONS AND WERE NOT EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND ACCORDINGLY WERE EMPLOYEES OF THE RESPONDENT FOR THE PURPOSES OF THE ACT. WHILE SOME OF THE MATTERS RELATING TO LABOUR RELATIONS MIGHT OTHERWISE BE CONFIDENTIAL, HOWEVER IN VIEW OF THE FACT THAT SUCH MATTERS ARE DISCUSSED PUBLICLY AT CITY COUNCIL OR ARE PUBLISHED FOR PUBLIC CONSUMPTION BY THE RESPONDENT MUNICIPALITY, SUCH MATTERS CANNOT BE CONSIDERED CONFIDENTIAL WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT. IT IS ALSO RECOGNIZED THAT ADDITIONAL FUNCTIONS MAY BE GIVEN TO SOME OF THE PERSONS REFERRED TO ABOVE AT SUCH TIME AS THE COMPUTER SYSTEMS ARE FULLY IMPLEMENTED AND UTILIZED AND THIS MAY NECESSITATE A FURTHER ASSESSMENT OF THEIR DUTIES AND RESPONSIBILITIES AT THAT TIME.

7. THE BOARD FINDS THAT R. KENYON EXERCISES MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND IS NOT AN EMPLOYEE OF THE RESPONDENT FOR THE PURPOSES OF THE ACT.

1566-71-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL 2486 (APPLICANT) v. KINGSWAY BUILDERS (RESPONDENT) v. EMPLOYEE (OBJECTOR).

BEFORE: R.F. EGAN, VICE CHAIRMAN AND BOARD MEMBERS O. HODGES AND H. ADE.

DECISION OF THE BOARD:

MARCH 17, 1972.

1. ON THE DAY PRIOR TO THE DATE SET FOR THE HEARING OF THIS MATTER THE REPRESENTATIVE OF THE APPLICANT ADVISED THE BOARD BY TELEPHONE THAT HE WAS SNOW BOUND IN SUDBURY AND WOULD NOT BE ABLE TO APPEAR. THE BOARD ATTEMPTED TO GET IN TOUCH WITH THE RESPONDENT AND OBJECTOR BUT WERE UNABLE TO REACH THEM IN SUDBURY.

2. ON THE DATE OF THE HEARING THE REPRESENTATIVES OF THE RESPONDENT APPEARED AND WERE PREPARED TO PROCEED WITH THE MATTER. THEY HAD BEEN ABLE TO LEAVE SUDBURY THE PREVIOUS DAY AND APPARENTLY WERE ON THEIR WAY WHILE THE BOARD WAS ATTEMPTING TO CONTACT THEM. NO ONE APPEARED FOR THE APPLICANT AT THE HEARING AND NOTHING FURTHER HAS BEEN HEARD FROM IT.

3. IN THE CIRCUMSTANCES THE BOARD HAS NO ALTERNATIVE BUT TO DISMISS AND HEREBY DISMISSES THE APPLICATION.

522-71-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) V. PERF CONSTRUCTION COMPANY (RESPONDENT) V. OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, LOCAL UNION #172 (INTERVENER).

BEFORE: R.A. FURNESS, VICE CHAIRMAN AND BOARD MEMBERS F.W. MURRAY AND P.J. O'KEEFFE.

DECISION OF THE BOARD:

MARCH 15, 1972.

1. AT THE CONTINUATION OF THE HEARING IN THIS MATTER THE INTERVENER INFORMED THE BOARD THAT IT WAS CONCEDED THAT THE ALLEGED COLLECTIVE AGREEMENT BETWEEN ITSELF AND THE RESPONDENT DATED APRIL 12, 1971 WAS NOT A COLLECTIVE AGREEMENT WITHIN THE MEANING OF SECTION 1(1)(E) (FORMERLY 1(1)(C)) OF THE LABOUR RELATIONS ACT AND THAT ACCORDINGLY THE ALLEGED COLLECTIVE AGREEMENT WAS NOT A BAR TO THIS APPLICATION FOR CERTIFICATION. HAVING REGARD TO THE FOREGOING AND TO THE REPRESENTATIONS OF THE PARTIES, THE BOARD FINDS THAT THE ALLEGED COLLECTIVE AGREEMENT REFERRED TO ABOVE IS NOT A BAR TO THIS APPLICATION FOR CERTIFICATION.

2. THE INTERVENER, HOWEVER, SUBMITTED THAT IT HAD STATUS TO INTERVENE IN THIS PROCEEDING ON THE BASIS THAT IT REPRESENTED MEMBERS WHO WERE EMPLOYED BY THE RESPONDENT ON THE DATE OF THE MAKING OF THIS APPLICATION FOR CERTIFICATION. IN SUPPORT OF ITS CONTENTION THE INTERVENER ADDUCED EVIDENCE BEFORE THE BOARD REGARDING THE MEMBERSHIP OF CERTAIN PERSONS. THIS EVIDENCE CONSISTED OF TESTIMONY BY MR. ANTHONY MARIANO, AN INTERNATIONAL REPRESENTATIVE FOR THE INTERVENER IN

THE PROVINCE OF ONTARIO, FROM THE INTERVENER'S MEMBERSHIP RECORDS. MR. MARIANO TESTIFIED THAT THESE PERSONS WERE MEMBERS OF THE INTERVENER AND GAVE EVIDENCE FROM THE INTERVENER'S RECORDS THAT THESE PERSONS HAD PAID MONTHLY DUES TO THE INTERVENER. THE EVIDENCE CONCERNING MEMBERSHIP OF THESE PERSONS IN THE INTERVENER WAS NOT REBUTTED BY EITHER THE RESPONDENT OR THE APPLICANT. HAVING REGARD TO THE EVIDENCE ADDUCED BEFORE THE BOARD AND TO THE REPRESENTATIONS OF THE PARTIES, THE BOARD IS SATISFIED THAT THESE PERSONS WERE MEMBERS OF THE INTERVENER ON THE DATE OF THE MAKING OF THIS APPLICATION.

3. ON FEBRUARY 1, 1972 THE BOARD APPOINTED AN EXAMINER IN THIS MATTER. THE PARTIES ARE IN AGREEMENT WITH RESPECT TO THE MATTERS WHICH THE EXAMINER WAS DIRECTED TO INQUIRE INTO AND HAVE AGREED TO WAIVE A FORMAL REPORT BY THE EXAMINER AND HAVE FURTHER AGREED TO THE EXAMINER SUBMITTING HIS REPORT TO THE BOARD IN MEMORANDUM FORM. ON THE BASIS OF THE MEMORANDUM OF THE EXAMINER BEFORE THE BOARD AND THE EVIDENCE ADDUCED BY THE INTERVENER BEFORE THE BOARD, THE BOARD FINDS THAT THE INTERVENER REPRESENTED MEMBERS WHO WERE IN THE EMPLOY OF THE RESPONDENT ON THE DATE OF THE MAKING OF THIS APPLICATION. THE BOARD ACCORDINGLY FINDS THAT THE INTERVENER HAS STATUS TO INTERVENE IN THIS PROCEEDING.

4. HAVING REGARD TO THE FOREGOING, THE REGISTRAR IS DIRECTED TO LIST THIS APPLICATION FOR FURTHER HEARING FOR THE PURPOSE OF ENTERTAINING THE REPRESENTATIONS OF THE PARTIES IN CONNECTION WITH THE APPROPRIATE BARGAINING UNIT AND ALSO TO PERMIT THE PARTIES TO ADDUCE EVIDENCE AND MAKE REPRESENTATIONS ON THE ALLEGATIONS OF IMPROPER OR IRREGULAR CONDUCT FILED BY THE INTERVENER.

1358-71-U: WILLIAM WARCHOW, ESQ., BUSINESS MANAGER, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL UNION 586 (COMPLAINANT) V. DONALD SERVANT ELECTRIC LIMITED (RESPONDENT).

BEFORE: FRANK V. BOSCARIOL, VICE-CHAIRMAN, AND BOARD MEMBERS P. J. O'KEEFFE AND H. F. IRWIN.

APPEARANCES AT THE HEARING: M. J. O'GRADY FOR THE COMPLAINANT; W. G. PHELPS AND DONALD SERVANT FOR THE RESPONDENT.

DECISION OF THE BOARD: MARCH 17, 1972.

1. THIS IS A COMPLAINT FILED UNDER THE PROVISIONS OF SECTION 79 OF THE LABOUR RELATIONS ACT, WHEREIN THE COMPLAINANT ALLEGES THAT JACK CROSS, CLAUDE LEDUC, MARCEL LEGAULT, LUC SEGUIN AND JEAN MARIE RONDEAU HAVE BEEN DEALT WITH BY THE RESPONDENT CONTRARY TO SECTION 58(A) OF THE ACT.

2. AT THE HEARING OF THIS MATTER ON FEBRUARY 4, 1972, THE COMPLAINANT ABANDONED THE COMPLAINT INsofar AS IT RELATES TO JEAN MARIE RONDEAU AND PROCEEDINGS IN THIS REGARD ARE ACCORDINGLY DISMISSED.

3. AT THE COMMENCEMENT OF PROCEEDINGS, THE RESPONDENT SUBMITTED THAT THE BOARD HAD NO JURISDICTION TO ENTERTAIN THE COMPLAINT INsofar AS IT RELATES TO THE TERMINATIONS OF CLAUDE LEDUC AND JACK CROSS, ON THE BASIS THAT THESE EMPLOYEES WERE AT ALL RELEVANT TIMES EMPLOYED IN THE PROVINCE OF QUEBEC.

4. BY LETTER DATED MARCH 2, 1972 THE COMPLAINANT HAS ADVISED THE BOARD THAT THE COMPLAINT INsofar AS IT RELATES TO CLAUDE LEDUC WAS NOT BEING PURSUED AND PROCEEDINGS IN THIS REGARD ARE ACCORDINGLY DISMISSED. THE BOARD THEREFORE PROPOSES TO DEAL WITH THE ISSUE OF JURISDICTION IN THIS COMPLAINT ONLY INsofar AS IT RELATES TO THE AGGRIEVED PERSON, JACK CROSS.

5. THE FACTS IN THIS REGARD, WHICH ARE NOT IN DISPUTE, ARE AS FOLLOWS. THE RESPONDENT IS A LIMITED COMPANY INCORPORATED UNDER THE LAWS OF THE PROVINCE OF ONTARIO WITH ITS HEAD OFFICE LOCATED AT OTTAWA. THIS OFFICE ALSO SERVES TO CARRY OUT THE ADMINISTRATIVE DAY-TO-DAY PURPOSES OF THE RESPONDENT. IN ADDITION TO CONDUCTING ITS BUSINESS IN THE PROVINCE OF ONTARIO, THE RESPONDENT CARRIES ON BUSINESS IN THE PROVINCE OF QUEBEC AND IN CONFORMITY WITH QUEBEC LAW MAINTAINS AN OFFICE IN HULL EQUIPPED WITH A TELEPHONE. HOWEVER, THIS OFFICE IS NOMINAL ONLY AND NO BUSINESS IS IN FACT TRANSACTED THEREIN NOR IS IT ACTUALLY OCCUPIED.

6. THE RESPONDENT'S OPERATIONS WOULD GENERALLY APPEAR TO BE CONFINED TO PROJECTS IN THE OTTAWA-HULL AREA. HOWEVER, THE RESPONDENT MAINTAINS ONLY ONE PAYROLL FOR ALL PURPOSES AND ALL EMPLOYEES ARE SHOWN THEREIN REGARDLESS OF WHETHER THEY ARE PHYSICALLY WORKING IN HULL OR OTTAWA. THE PAYROLL BANK ACCOUNT AND ALL OF THE RESPONDENT'S BOOKS ARE RETAINED IN OTTAWA.

7. AS REGARDS THOSE EMPLOYEES, PHYSICALLY WORKING IN QUEBEC, THE RESPONDENT IS REQUIRED TO PAY SUCH EMPLOYEES THE MINIMUM WAGE AS DETERMINED BY THE LABOUR DECREE FOR ELECTRICAL CONSTRUCTION. FURTHER, THE RESPONDENT IS REQUIRED TO MAKE PAYMENTS TO A QUEBEC PARITY COMMITTEE, THE GOVERNMENTAL AGENCY ADMINISTERING THIS DECREE. THE BOOKS OF THE RESPONDENT CONCERNING THESE EMPLOYEES EVEN THOUGH SITUATED IN OTTAWA, ARE SUBJECT TO AUDIT BY THIS AGENCY TO ENSURE THAT THE APPROPRIATE PAYMENTS HAVE BEEN MADE. IN THIS REGARD, ITS FUNCTIONS WOULD APPEAR TO BE ANALOGOUS TO THE AUDIT CONDUCTED BY THE EMPLOYMENT STANDARDS BRANCH OF THE ONTARIO DEPARTMENT OF LABOUR IN RELATION TO EMPLOYEES WORKING IN ONTARIO. FURTHER, THE EMPLOYEES OF THE RESPONDENT WORKING IN QUEBEC ARE INSURED UNDER THE QUEBEC LAWS RELATING TO WORK-

MEN'S COMPENSATION FOR INJURIES SUSTAINED WHILE WORKING IN QUEBEC AND THE RESPONDENT IS REQUIRED TO CONTRIBUTE TO THE FUND ESTABLISHED FOR THIS PURPOSE.

8. THE AGGRIEVED PERSON, JACK CROSS, WAS HIRED BY THE RESPONDENT ON MAY 28, 1970, AND HAS WORKED IN HULL FOR THE IMMEDIATE SIX WEEKS PRECEDING HIS TERMINATION IN NOVEMBER OF 1971. HOWEVER, THE RESPONDENT CONCEDES THAT PRIOR TO THIS TIME HE MAY HAVE WORKED EXCLUSIVELY IN OTTAWA FOLLOWING HIS HIRING. CROSS IS A RESIDENT IN ONTARIO. AT THE RELEVANT TIMES OF HIS EMPLOYMENT IN QUEBEC, CROSS WENT DIRECTLY TO HIS HOME NEAR OTTAWA AT THE END OF EACH WORKING DAY. AN EXCEPTION TO THIS SITUATION OCCURRED ON NOVEMBER 8, 1971, IN WHICH HE WAS ASKED TO REPORT AT THE OTTAWA OFFICE. HOWEVER, NO ACTUAL WORK WAS PERFORMED ON THIS DAY. WHILE CROSS DID NOT REPORT BACK TO THE RESPONDENT'S OFFICE IN OTTAWA EACH DAY, HE DID OCCASIONALLY ON CERTAIN FRIDAYS ATTEND AT THE OTTAWA OFFICE AFTER WORKING HOURS TO PICK UP HIS CHEQUE. AT OTHER TIMES, THE CHEQUE WOULD BE GIVEN TO HIM ON THE WORK SITE IN HULL.

9. IN MAINTAINING THAT THE BOARD HAD NO JURISDICTION TO ENTER- TAIN THIS APPLICATION, COUNSEL FOR THE RESPONDENT DREW THE ATTENTION OF THE BOARD TO THREE CASES. FIRSTLY, IN THE LABOUR RELATIONS BOARD OF NEW BRUNSWICK V. EASTERN BAKERIES LTD. AND LOCAL UNION #76, TEAM- STERS, CHAUFFEURS, WAREHOUSEMEN, HELPERS AND MISCELLANEOUS WORKERS AND ATTORNEY GENERAL OF NEW BRUNSWICK [1961] 26 D.L.R. (2ND) 332, A DECISION OF THE SUPREME COURT OF CANADA, THE NEW BRUNSWICK LABOUR RELATIONS BOARD REJECTED THE COMPANY'S SUBMISSION THAT THE BARGAINING UNIT SHOULD INCLUDE THOSE EMPLOYEES ON ITS PAYROLL RESIDENT AND EM- PLOYED IN NOVA SCOTIA AND PRINCE EDWARD ISLAND AND CONFINED THE UNIT TO EMPLOYEES WORKING AT THE MONCTON PLANT IN NEW BRUNSWICK. IN UP- HOLDING THE POSITION OF THE BOARD IN THIS REGARD, THE COURT AT PAGE 336 STATED:

"THERE IS NO EVIDENCE AS TO WHERE THE HIRING OF THE RESIDENT EMPLOYEES IN NOVA SCOTIA OR PRINCE EDWARD ISLAND OCCURRED BUT IT DOES NOT ADVANCE THE CASE FOR THE RESPONDENT IF IT TOOK PLACE AT MONCTON. THE NEW BRUNSWICK LABOUR RELATIONS BOARD CAN HAVE NO JURISDICTION OVER PERSONS RESIDING AND WORKING OUTSIDE THAT PRO- VINCE SO AS TO DECLARE THAT THEY ARE PART OF THE MEMBERSHIP OF A UNIT OF THE COMPANY'S EM- PLOYEES RESIDING AND WORKING IN NEW BRUNSWICK. THE FACT OF PROXIMITY IN THE PRESENT INSTANCE DOES NOT DISTINGUISH IT FROM THE CASE WHERE EMPLOYEES OF A COMPANY IN TORONTO MAY DO SIM- ILAR WORK TO THAT OF OTHER EMPLOYEES OF THE SAME COMPANY IN THE SAME CATEGORY RESIDING

AND WORKING IN MONTREAL. SUCH LATTER EMPLOYEES COULD NOT BE INCLUDED BY AN ONTARIO LABOUR RELATIONS BOARD UNDER SIMILAR LEGISLATION IN ONTARIO FOR THE PURPOSE OF DECLARING A BARGAINING UNIT."

10. IN THE INTER-PROVINCIAL PAVING COMPANY LIMITED CASE OLRB M. R. DECEMBER 1962, PAGE 375, THE APPLICANT UNION WAS SEEKING BARGAINING RIGHTS FOR A GROUP OF EMPLOYEES OF A QUEBEC COMPANY WHILE WORKING ON A JOB SITE LOCATED IN ONTARIO. THE COMPANY IN THAT CASE MAINTAINED AN ADDRESS IN OTTAWA AND DIVIDED ITS WORK BETWEEN HULL AND OTTAWA. SOME OF THE EMPLOYEES IN QUESTION WERE RESIDENTS OF ONTARIO WHILE OTHERS RESIDED IN QUEBEC. IN CERTIFYING THE APPLICANT TO REPRESENT ALL LABOURERS EMPLOYED IN OTTAWA AND EASTVIEW, AND TOWNSHIPS AND MUNICIPALITIES IMMEDIATELY ADJACENT THERETO IN ONTARIO, THE BOARD STATED AT PAGE 377:

"...THERE IS NO SUGGESTION THAT THE BOARD'S CERTIFICATE WOULD OR SHOULD APPLY TO EMPLOYEES WHILE WORKING OUTSIDE THE PROVINCE OF ONTARIO BUT ONLY WHILE EMPLOYED ON LOCAL WORKS OR UNDERTAKINGS WITHIN THE PROVINCE."

11. FINALLY, COUNSEL REFERRED US TO THE DONTAR LIMITED, TRUCKING DIVISION CASE OLRB M.R. JULY, 1970, P.495, WHEREIN THE BOARD ISSUED A CERTIFICATE ON BEHALF OF CERTAIN EMPLOYEES PERFORMING TRUCKING FUNCTIONS AT CORNWALL DESPITE THE FACT THAT THEY CAME UNDER THE JURISDICTION, SUPERVISION AND ADMINISTRATION OF THE EMPLOYER'S DORVAL TERMINAL IN QUEBEC. DESPITE THE FACT THAT THE EMPLOYER'S OPERATIONS WERE ADMINISTERED FROM QUEBEC, IT WOULD APPEAR THAT THE BOARD STILL HAD JURISDICTION TO CERTIFY THOSE EMPLOYEES WHO REPORTED FOR WORK AT THE CORNWALL DEPOT.

12. HOWEVER, IN OUR OPINION, THERE IS ADDITIONAL EVIDENCE BEFORE THIS BOARD WHICH IS RELEVANT TO THE QUESTION CONCERNING THE BOARD'S JURISDICTION IN THIS MATTER. IN THIS REGARD, IT WOULD APPEAR THAT CROSS WAS IN ATTENDANCE AT A UNION MEETING HELD IN OTTAWA ON THE EVENING OF NOVEMBER 5, 1971, WHICH HAD BEEN CALLED FOR THE PURPOSE OF OBTAINING MEMBERSHIP IN THE UNION. IT WOULD FURTHER APPEAR THAT THE TIMING OF THE TERMINATION OF THIS AGGRIEVED PERSON EMANATED FROM AND TOOK PLACE IN OTTAWA AND FOLLOWED CLOSELY UPON THE HEELS OF THIS MEETING. IN OTHER WORDS, IT WOULD APPEAR THAT BOTH THE UNION ACTIVITY OF CROSS AND THE RESULTANT DISCRIMINATION BY THE RESPONDENT FOR SUCH ACTIVITY, IF PROVED, WOULD HAVE OCCURRED IN ONTARIO. IN THESE CIRCUMSTANCES, WE ARE NOT SATISFIED THAT THE BOARD IS DEPRIVED OF JURISDICTION IN THIS MATTER SIMPLY BECAUSE THE AGGRIEVED PERSON IN QUESTION WAS PHYSICALLY EMPLOYED BY THE RESPONDENT OUTSIDE OF THE PROVINCE FOR AT LEAST

A SIX WEEK PERIOD PRECEDING THE DATE OF THE FILING OF THIS APPLICATION. WE NOTE THAT IN THIS CASE, WE ARE NOT CALLED UPON TO DEAL WITH THE SITUATION WHERE THE AGGRIEVED PERSON IS SEEKING REINSTATEMENT WITH HIS PREVIOUS EMPLOYER.

13. ACCORDINGLY, WE FIND THAT THE CIRCUMSTANCES HEREIN REPRESENT QUITE A DIFFERENT SITUATION FROM THAT AS SET OUT IN THE ABOVE CITED CASES REFERRED TO US BY COUNSEL FOR THE RESPONDENT. WE FIND THAT THESE CASES, WHICH DEAL WITH APPLICATIONS FOR CERTIFICATION, ARE CLEARLY DISTINGUISHABLE FROM THE INSTANT APPLICATION. IN THE LATTER CASE, WE ARE DEALING WITH A COMPLAINT FILED PURSUANT TO THE PROVISIONS OF SECTION 79 OF THE ACT, CONTAINING ALLEGATIONS OF UNFAIR LABOUR PRACTICES COMMITTED IN ONTARIO ON THE PART OF THE RESPONDENT IN RESPONSE TO UNION ACTIVITY ON THE PART OF THE AGGRIEVED PERSON, CROSS, WHICH ALSO IS ALLEGED TO HAVE OCCURRED IN ONTARIO.

14. HAVING REGARD TO ALL OF THESE CIRCUMSTANCES, WE ACCORDINGLY FIND THAT THE BOARD HAS JURISDICTION TO ENTERTAIN THIS COMPLAINT INsofar AS IT RELATES TO THE TERMINATION OF JACK CROSS.

15. PRIOR TO DEALING WITH THE MERITS OF THE COMPLAINT, THE BOARD PROPOSES TO DEAL WITH THE VARIOUS OBJECTIONS RAISED BY COUNSEL FOR THE RESPONDENT DURING THE COURSE OF THIS HEARING CONCERNING THE ADMISSION OF CERTAIN EVIDENCE. THE FIRST OBJECTION RAISED IN THIS REGARD IS CONCERNED WITH THE BOARD ENTERTAINING EVIDENCE IN RELATION TO AN ALLEGED CONVERSATION ON NOVEMBER 8, 1971, BETWEEN MARCEL LEGAULT AND DONALD SERVANT, ON THE BASIS THAT PARTICULARS IN THIS REGARD WERE NOT ALLEGED PURSUANT TO THE PROVISIONS OF SECTION 47 OF THE BOARD'S RULES OF PROCEDURE. IN THIS CONNECTION, THE RELEVANT PORTION OF THE COMPLAINT WHICH WAS FILED ON DECEMBER 6, 1971, READS AS FOLLOWS:

"ON OR ABOUT NOVEMBER 5, 19 AND 30TH, 1971 THE GRIEVORS WERE DEALT WITH BY DONALD SERVANT, ESQ. AND MAURICE SERVANT, ESQ. OF THE RESPONDENT CONTRARY TO THE PROVISIONS OF SECTION 58(A) OF THE LABOUR RELATIONS ACT IN THAT THEY DID ON THEIR OWN BEHALF OR ON BEHALF OF THE RESPONDENT: PURPORT TO DISMISS THE GRIEVORS FROM THE EMPLOYMENT OF DONALD SERVANT ELECTRIC LIMITED, WITHOUT ANY PRIOR NOTICE, BY REASON ONLY OF THEIR MEMBERSHIP IN A TRADE UNION."

16. ALTHOUGH THE COMPLAINANT ABANDONED AT THE HEARING OF THIS MATTER ITS COMPLAINT AS REGARDS JEAN RONDEAU, COUNSEL FOR THE RESPONDENT RAISED A SECOND OBJECTION AS REGARDS THE BOARD ENTERTAINING HIS

EVIDENCE. COUNSEL FOR THE COMPLAINANT INDICATED THAT THE PURPOSE OF RONDEAU'S EVIDENCE WAS TO CORROBORATE THE EVIDENCE GIVEN BY PREVIOUS WITNESSES IN THESE PROCEEDINGS. SIMILARLY, IT WAS ON THIS BASIS THAT COUNSEL FOR THE COMPLAINANT CALLED ITS FINAL WITNESS IN THESE PROCEEDINGS, VIZ. JEAN BARETTE, PRIOR TO CLOSING ITS CASE. COUNSEL FOR THE RESPONDENT ALSO OBJECTED TO THE BOARD ENTERTAINING HIS EVIDENCE. FOLLOWING A RECESS, HE UNDERTOOK TO SUPPLY THE BOARD WITH THE RELEVANT CASES INTERPRETING SECTION 47 OF THE BOARD'S RULES OF PROCEDURE. BY LETTER DATED FEBRUARY 7, 1972, COUNSEL SUPPLIED THE BOARD WITH THE FOLLOWING CASES:

"FLECK MANUFACTURING 62 CLLC PG. 1046

SEAWAY APPAREL MAY 1967 OLRB MONTHLY REPORT
PG. 145

KING OPTICAL JANUARY 1968 OLRB MONTHLY REPORT
PG. 952

NATIONAL STARCH SEPTEMBER 1968 OLRB MONTHLY REPORT
PG. 597

AMERICAN OPTICAL SEPTEMBER 1968 OLRB MONTHLY
REPORT PG. 602

ARO OF CANADA FEBRUARY 1969 OLRB MONTHLY REPORT
PG. 1181"

17. HOWEVER, A REVIEW OF THE ABOVE CITED CASES INDICATES THAT THEY ALL DEAL WITH APPLICATIONS FOR CERTIFICATION. NONE INVOLVE COMPLAINTS FILED UNDER THE PROVISIONS OF SECTION 79 OF THE ACT. FURTHER, WITH THE EXCEPTION OF THE AMERICAN OPTICAL CASE (SUPRA), WHICH INVOLVES THE QUESTION OF THE APPLICANT UNION'S DELAY IN FILING CHARGES AGAINST A PETITION, THESE DECISIONS DEAL WITH THE QUESTION OF THE DELAY IN RAISING CHARGES CONCERNING IRREGULARITIES IN THE EVIDENCE OF MEMBERSHIP FILED BY THE APPLICANT UNION. IN OUR OPINION, THERE EXISTS A VITAL DISTINCTION IN THESE CASES WHICH DEAL WITH CHARGES FILED INCIDENTALLY TO THE MAIN CERTIFICATION APPLICATION AS COMPARED TO THE COMPLAINT APPLICATION FILED HEREIN PURSUANT TO THE PROVISIONS OF SECTION 79 OF THE ACT, THE VERY ESSENCE OF WHICH CONSISTS OF THE CHARGE ITSELF. WE THEREFORE FIND THAT THE CASES ABOVE CITED DO NOT PRECLUDE THE BOARD FROM ENTERTAINING THE AFOREMENTIONED TESTIMONY WHICH WAS OBJECTED TO AT THE HEARING. MOREOVER, COUNSEL FOR THE RESPONDENT WAS ADVISED AT THE HEARING THAT IN THE EVENT OF SURPRISE IN THESE CIRCUMSTANCES, THE BOARD WOULD ENTERTAIN A MOTION FOR AN ADJOURNMENT OF THESE PROCEEDINGS IN ORDER TO ENABLE HIM TO PREPARE A DEFENCE IN RELATION TO THESE "FRESH" MATTERS.

18. HAVING REGARD THEREFORE TO ALL OF THE CIRCUMSTANCES HEREIN AND TAKING INTO ACCOUNT THE DISCRETION OF THE BOARD AS REGARDS THE ADMISSION OF EVIDENCE CONCERNING ANY MATERIAL FACT PURSUANT TO SECTION 47(4) OF THE BOARD'S RULES OF PROCEDURE, AND IN THE ABSENCE OF ANY DEMAND FOR PARTICULARS PRIOR TO THE HEARING, WE HEREBY CONFIRM OUR ORIGINAL RULINGS IN THIS MATTER, ADMITTING EVIDENCE OF THE CONVERSATION ON NOVEMBER 8, 1971, REFERRED TO IN PARAGRAPH #15 HEREIN, TOGETHER WITH ADMITTING THE TESTIMONY OF JEAN RONDEAU AND JEAN BARLETTE.

19. UPON COUNSEL FOR THE COMPLAINANT CLOSING HIS CASE, THE BOARD ADJOURNED PROCEEDING AND THE PARTIES WERE SUBSEQUENTLY ADVISED BY THE REGISTRAR THAT THE MATTER HAD BEEN LISTED FOR CONTINUATION OF HEARING ON MARCH 10, 1972. HOWEVER BY LETTER DATED FEBRUARY 29, 1972, COUNSEL FOR THE RESPONDENT ADVISED THE BOARD AS FOLLOWS:

"THE RESPONDENT COMPANY NOW INSTRUCTS US THAT IT DOES NOT WISH TO CALL ANY EVIDENCE IN THIS MATTER OR TO MAKE FURTHER ARGUMENT. ACCORDINGLY THE RESPONDENT DOES NOT WISH TO APPEAR AT THE FURTHER HEARING SCHEDULED IN THIS MATTER FOR FRIDAY, MARCH 10TH IN OTTAWA.

THIS IS WITHOUT PREJUDICE TO THE ARGUMENT MADE AT THE HEARING ON FEBRUARY 4TH THAT THE ONTARIO LABOUR RELATIONS BOARD DOES NOT HAVE JURISDICTION WITH RESPECT TO THE COMPLAINTS OF MESSRS. CROSS AND LEDUC WHO WERE WORKING IN HULL, QUEBEC AT THE TIME OF THEIR LAY-OFF.

ON BEHALF OF THE RESPONDENT WE NOTE THAT NO EVIDENCE WAS CALLED WITH RESPECT TO THE COMPLAINT OF MR. LEDUC AND WE PRESUME THAT THE COMPLAINT HAS BEEN WITHDRAWN. WE FURTHER NOTE THAT THE COMPLAINANTS ARE NOT REQUESTING REINSTATEMENT IN EMPLOYMENT AND, IN FACT, ALL OF THE COMPLAINANTS INDICATED THAT THEY WOULD NOT RETURN TO WORK FOR DONALD SERVANT ELECTRIC LIMITED UNDER THE PRESENT CONDITIONS."

20. THE EVIDENCE CONCERNING THE COMPLAINT INSOFAR AS IT RELATES TO THE AGGRIEVED PERSON JACK CROSS IS AS FOLLOWS: JACK CROSS TESTIFIED THAT AFTER PICKING UP HIS CHEQUE AT THE OTTAWA OFFICE AT THE END OF HIS DAY'S WORK ON FRIDAY NOVEMBER 19, 1971, HE WAS MET BY DONALD SERVANT AND INFORMED THAT HE WAS NOT NEEDED FOR WORK ON THE FOLLOWING MONDAY SINCE THINGS WERE A LITTLE SLACK. THE WITNESS FURTHER STATED THAT HE HAD BEEN EMPLOYED BY THE RESPONDENT SINCE MAY OF 1970, AND THAT HE HAS NEVER RECEIVED COMPLAINTS ABOUT HIS WORK. HE FELT THAT AT THE TIME OF

HIS LAY-OFF EVERYONE SEEMED TO BE BUSY AND IN FACT STATED THAT ONE WEEK PRIOR TO HIS TERMINATION THE RESPONDENT HAD HIRED TWO MORE MEN. HOWEVER, UPON CROSS-EXAMINATION HE DID CONCEDE THAT BOTH OF THESE PERSONS HAD PREVIOUSLY WORKED FOR THE RESPONDENT.

21. THE UNCONTRADICTED EVIDENCE OF MARCEL LEGAULT IN THIS REGARD, IS TO THE EFFECT THAT DONALD SERVANT HIS SUPERVISOR INFORMED HIM ON NOVEMBER 8, 1971, THAT JACK CROSS WAS GOING TO BE LAID OFF BECAUSE HE (CROSS) WAS "ONE OF THE LEADERS FOR THE UNION." THE UNCONTRADICTED EVIDENCE OF JEAN RONDEAU IN THIS REGARD, IS THAT MAURICE SERVANT, ANOTHER SUPERVISOR WITH THE RESPONDENT, HAD TOLD HIM ON NOVEMBER 18, 1971, AT THE SHOP THAT "JACK CROSS WOULD BE FIRED WHEN EVERYTHING WAS OVER AND HE WOULD FIX IT BECAUSE CROSS WAS THE MAIN ORGANIZER OF THE MEN." THE UNCONTRADICTED AND CORROBORATIVE EVIDENCE OF JEAN BARETTE IS TO THE EFFECT THAT MAURICE SERVANT HAD TOLD HIM SOMETIME IN NOVEMBER OF 1971, THAT, "I WILL GET RID OF ALL THOSE UNION GUYS LIKE JACK CROSS."

22. HAVING REGARD TO ALL OF THE EVIDENCE, WE ARE SATISFIED ON THE BALANCE OF PROBABILITIES THAT THE COMPLAINANT HAS SATISFIED THE ONUS RESTING UPON HIM TO SHOW THAT THE AGGRIEVED PERSON, JACK CROSS WAS DISCHARGED BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF SECTION 58(A) OF THE ACT.

23. HAVING REGARD TO ALL OF THE CIRCUMSTANCES, THE BOARD THEREFORE DIRECTS THAT THE RESPONDENT SHALL FORTHWITH PAY JACK CROSS AS COMPENSATION FOR WAGES THE SUM OF \$73.68.

24. THE EVIDENCE CONCERNING THE COMPLAINT INSOFAR AS IT RELATES TO THE AGGRIEVED PERSON, MARCEL LEGAULT IS AS FOLLOWS: MARCEL LEGAULT TESTIFIED THAT HE HAD BEEN INTERMITTENTLY EMPLOYED BY THE RESPONDENT FOR THE PAST TWELVE YEARS. UPON COMPLETION OF HIS SHIFT AT 4 P.M. ON FRIDAY NOVEMBER 5, 1971, HE ATTENDED A MEETING AT A LOCAL HALL, WHEREIN HE ALONG WITH THE OTHER EMPLOYEES SIGNED AN APPLICATION FOR MEMBERSHIP CARD IN THE APPLICANT. FOLLOWING THIS MEETING, HE RETURNED HOME AND WAS INFORMED BY HIS WIFE THAT MAURICE SERVANT HAD PHONED AND ADVISED NOT TO REPORT FOR WORK ON THE FOLLOWING MONDAY, VIS. NOVEMBER 8, 1971. THE WITNESS FURTHER STATED THAT HE WAS SCHEDULED TO FINISH A JOB ON THIS DATE WHICH HE HAD STARTED THE PREVIOUS WEEK. IN ANY EVENT, HE MET DONALD SERVANT ON NOVEMBER 8, 1971, WHO INFORMED THE WITNESS THAT HE WAS GOING TO BE LAID OFF BECAUSE HE ALONG WITH JACK CROSS WERE LEADERS IN GETTING EMPLOYEES TO SIGN UNION CARDS.

25. THE UNCONTRADICTED EVIDENCE OF JEAN RONDEAU IS TO THE EFFECT THAT HE HAD A TELEPHONE CONVERSATION WITH MAURICE SERVANT AT 7:45 P.M., FOLLOWING HIS RETURN HOME FROM THE UNION MEETING ON THE EVENING OF NOVEMBER 5, 1971. HE WAS TOLD BY MAURICE SERVANT AT THIS TIME THAT HE HAD "FIRED LEGAULT ALREADY BECAUSE OF THE UNION CARDS AND THAT THERE WOULD BE A FEW OTHERS."

26. HAVING REGARD TO ALL OF THE EVIDENCE WE ARE SATISFIED ON THE BALANCE OF PROBABILITIES THAT THE COMPLAINANT HAS SATISFIED THE ONUS RESTING UPON HIM TO SHOW THAT THE AGGRIEVED PERSON, MARCEL LEGAULT WAS DISCHARGED BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF SECTION 58(A) OF THE ACT.

27. HAVING REGARD TO ALL OF THE CIRCUMSTANCES, THE BOARD THEREFORE DIRECTS THAT THE RESPONDENT SHALL FORTHWITH PAY MARCEL LEGAULT AS COMPENSATION FOR WAGES, THE SUM OF \$147.38.

28. AS NEITHER JACK CROSS OR MARCEL LEGAULT HAS EXPRESSED A DESIRE TO RETURN TO WORK WITH THEIR PREVIOUS EMPLOYER UNDER EXISTING CIRCUMSTANCES, THE BOARD IS NOT DISPOSED TO ORDER REINSTATEMENT IN EMPLOYMENT OF EITHER OF THESE AGGRIEVED PERSONS.

29. HAVING REGARD TO ALL OF THE EVIDENCE AS ADDUCED AT THE HEARING OF THIS COMPLAINT AS IT RELATES TO LUC SEGUIN, WE ARE SATISFIED THAT THIS AGGRIEVED PERSON WAS TERMINATED BY THE RESPONDENT ON NOVEMBER 30, 1971, FOR HIS FAILURE TO SHOVEL SNOW WHEN SO INSTRUCTED BY HIS SUPERVISOR. IN THE RESULT, WE FIND THAT THE COMPLAINANT HAS FAILED TO SATISFY THE ONUS RESTING UPON HIM OF ESTABLISHING THAT LUC SEGUIN WAS DEALT WITH BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF THE ACT. THE COMPLAINT, THEREFORE, INsofar AS IT RELATES TO LUC SEGUIN IS DISMISSED.

1492-71-R: LOCAL UNION 1940 OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA AND GRAND RIVER VALLEY DISTRICT COUNCIL OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA ON BEHALF OF LOCALS UNIONS 498, 949, 1940 AND 2173 (APPLICANTS) V. DIETRICH & KOEHLER CONSTRUCTION LTD., AND D-K CONSTRUCTION LIMITED (RESPONDENTS).

BEFORE: FRANK V. BOSCARIOL, VICE-CHAIRMAN, AND BOARD MEMBERS D. B. ARCHER AND H. F. IRWIN.

APPEARANCES AT THE HEARING: R. KOSKIE AND A. M. MINSKY FOR THE APPLICANTS; ROBERT McCOMB FOR THE RESPONDENTS.

DECISION OF THE BOARD: MARCH 17, 1972.

1. THIS IS AN APPLICATION FILED PURSUANT TO THE PROVISIONS OF SECTION 55 OF THE LABOUR RELATIONS ACT.

2. ON FEBRUARY 9, 1972, AT THE CONCLUSION OF TWO DAYS OF HEARING IN THIS MATTER, COUNSEL FOR THE APPLICANT REQUESTED THAT THE BOARD DIRECT THE WITNESSES WHO HAD APPEARED UNDER SUMMONS, BUT WHO AS YET HAD NOT BEEN CALLED UPON TO GIVE EVIDENCE IN THESE PROCEEDINGS, TO REATTEND

AT THE BOARD ROOM IN TORONTO FOR THE CONTINUATION OF THIS HEARING. ALL OF THE WITNESSES CONCERNED, RESIDE IN THE KITCHENER AREA AND INCLUDE THREE OFFICERS OF THE RESPONDENT WHO ARE CLAIMED AS CLIENTS BY COUNSEL FOR THE RESPONDENT, TOGETHER WITH CERTAIN RANK AND FILE EMPLOYEES OF THE RESPONDENT. AT THE TIME OF THIS REQUEST, COUNSEL FOR THE RESPONDENT DID NOT OBJECT TO THIS REQUEST, BUT RAISED THE QUESTION OF THE NEED FOR THE PAYMENT OF FURTHER CONDUCT MONEY TO THE WITNESSES. COUNSEL FOR THE APPLICANT INDICATED THAT SUFFICIENT MONIES WERE ADVANCED IN THIS REGARD. IN ANY EVENT, THE BOARD ORDERED THE WITNESSES TO REATTEND. IMMEDIATELY FOLLOWING THE ADJOURNMENT OF THESE PROCEEDINGS, BOTH COUNSEL ATTENDED BEFORE THE REGISTRAR WHO LISTED THE MATTER FOR CONTINUATION OF HEARING COMMENCING ON MARCH 13, 1972.

3. BY LETTER DATED MARCH 10, 1972, COUNSEL FOR THE RESPONDENT ADVISED THE REGISTRAR AS FOLLOWS:

"AT THE CONCLUSION OF THE TWO DAYS OF THE HEARING OF THE ABOVE-MENTIONED MATTERS THE BOARD DIRECTED THOSE WITNESSES WHO APPEARED UNDER SUMMONS TO RETURN AT THE CONTINUATION OF THIS HEARING ON MARCH 13TH, 14TH AND 15TH PURSUANT TO THE TERMS OF THE SAID SUMMONS. AT THAT TIME I ASKED THE BOARD TO MAKE FURTHER PROVISIONS FOR CONDUCT MONEY. THE BOARD ADVISED THAT I SHOULD CONTRACT THE REGISTRAR WITH RESPECT TO THE MATTER OF CONDUCT MONEY. I WISH TO ADVISE THAT SOME OF THE WITNESSES HAVE NOT RECEIVED FURTHER CONDUCT MONEY. IN SUCH CIRCUMSTANCES SOME OR ALL OF THESE WITNESSES MAY RIGHTFULLY REFUSE TO REATTEND. I WISH TO SO ADVISE THE BOARD."

4. AT THE COMMENCEMENT OF PROCEEDINGS ON MARCH 13, 1972, NONE OF THE WITNESSES APPEARED. COUNSEL FOR THE APPLICANT, AT THIS TIME, STRONGLY ATTACKED COUNSEL FOR THE RESPONDENT FOR THE LATTER'S PARTICIPATION IN THIS REGARD AND REQUESTED, INTER ALIA, THAT A "BENCH WARRANT" (AS IT IS COMMONLY REFERRED TO), BE ISSUED IN THE CIRCUMSTANCES. IN REPLY, COUNSEL FOR THE RESPONDENT ADVISED THE BOARD THAT ON OR ABOUT MARCH 3, 1972, HE HAD A MEETING WITH TWO OF THE ABOVE RESPONDENT'S OFFICERS WHO AT THAT TIME INFORMED HIM THAT THEY HAD NOT RECEIVED ANY CONDUCT MONEY FROM THE APPLICANT REGARDING THEIR REATTENDANCE AT TORONTO FOR MARCH 13, 1972. THEY FURTHER INDICATED THAT THEY HAD RECEIVED QUERIES FROM SOME OF THE OTHER EMPLOYEES SUMMONED WHO FOUND THEMSELVES IN THE SAME SITUATION. COUNSEL FOR THE RESPON-

DENT UPON CONDUCTING HIS OWN RESEARCH INTO THE AREA OF BOARD POLICY, ADVISED HIS CLIENTS THAT IN HIS OPINION, BOARD PRACTICE DID NOT COMPEL THEIR ATTENDANCE IN THE ABSENCE OF PAYMENT OF THE NECESSARY CONDUCT MONEY PURSUANT TO TARIFF B OF THE SUPREME COURT RULES OF PRACTICE. HE FURTHER STATED THAT UPON SETTING OUT THE "LAW AS HE SAW IT", HE LEFT THE DECISION UP TO THE CLIENTS THEMSELVES AS TO WHETHER OR NOT THEY WOULD ATTEND AT THE CONTINUATION OF HEARING. AS OF MARCH 13, 1972, NO FURTHER CONDUCT MONEY WAS PAID IN THIS REGARD.

5. THE "LAW" AS RELIED UPON BY COUNSEL FOR THE RESPONDENT WOULD APPEAR TO INCORPORATE THE FOLLOWING: SECTION 92 OF THE LABOUR RELATIONS ACT PROVIDES, INTER ALIA, AS FOLLOWS:

"(1) THE BOARD SHALL EXERCISE SUCH POWERS AND PERFORM SUCH DUTIES AS ARE CONFERRED OR IMPOSED UPON IT BY OR UNDER THIS ACT.

(2) WITHOUT LIMITING THE GENERALITY OF SUB-SECTION 1, THE BOARD HAS POWER,

(A) TO SUMMON AND ENFORCE THE ATTENDANCE OF WITNESSES AND COMPEL THEM TO GIVE ORAL OR WRITTEN EVIDENCE ON OATH, AND TO PRODUCE SUCH DOCUMENTS AND THINGS AS THE BOARD CONSIDERS REQUISITE TO THE FULL INVESTIGATION AND CONSIDERATION OF MATTERS WITHIN ITS JURISDICTION IN THE SAME MANNER AS A COURT OF RECORD IN CIVIL CASES." (UNDERLINING ADDED)

IN INTERPRETING THE LANGUAGE OF PREVIOUS LEGISLATION WHICH IS NOT ENTIRELY DISSIMILAR FROM THAT ABOVE QUOTED, THE DECISION IN THE FORT HENRY HOTEL CASE, 52 CLLC ARTICLE 17,011, IS RELEVANT TO THE PRACTICE OF THE BOARD IN THIS REGARD. AT PAGE 1371, APPEARS THE FOLLOWING:

"THE POWER OF THE BOARD TO SUMMON PERSONS AND TO ENFORCE THE ATTENDANCE OF WITNESSES IT (SIC) SET OUT IN SECTION 3, SUBSECTION 7 OF THE LABOUR RELATIONS ACT, 1948. THAT SUBSECTION PROVIDES THAT THE BOARD "SHALL HAVE THE LIKE POWER TO ENFORCE THE ATTENDANCE OF WITNESSES...AS IS VESTED IN ANY COURT IN CIVIL CASES". NO PROVISION IS MADE IN THE ACT OR IN THE REGULATIONS FOR THE PAYMENT OF WITNESS FEES TO PERSONS SUMMONED TO APPEAR BEFORE THE BOARD. IT IS THE OPINION OF THE BOARD, HOWEVER, THAT THE REFERENCE TO THE COURT CONTAINED

IN THE SUBSECTION WARRANTS THE CONCLUSION THAT THE SAME REQUIREMENTS APPLY TO SERVICE OF A BOARD SUMMONS AS ATTACH TO SERVICE OF A SUBPOENA OF A COURT IN A CIVIL CASE."

IN THE SAME PARAGRAPH, IT WAS FURTHER STATED THAT:

"FURTHERMORE, THE BOARD IS ANXIOUS TO ENSURE THAT THE PRACTICE WHICH HAS GROWN UP OF SERVING PERSONS SUMMONED TO APPEAR BEFORE THE BOARD IN THE MANNER REQUIRED BY THE COURTS AND OF PAYING WITNESS FEES ON THE SUPREME COURT SCALE BE CONTINUED."

6. THE PRACTICE OF THE BOARD IN THIS REGARD, WAS FURTHER AMPLIFIED IN THE SENTRY DEPARTMENT STORES LIMITED CASE, OLRB M.R. FEBRUARY, 1964, PAGE 642, WHERE THE BOARD AT PAGE 643 STATED:

"IN ORDER TO BE VALID, A SUMMONS, LIKE A SUBPOENA IN COURT, MUST BE SERVED PERSONALLY UPON THE PERSON TO WHOM IT IS DIRECTED. THIS SERVICE MUST TAKE PLACE WITHIN A REASONABLE TIME PRIOR TO THE TIME WHEN THE WITNESS IS REQUIRED TO ATTEND TO TESTIFY AND THE WITNESS MUST ALSO BE GIVEN PROPER CONDUCT MONEY AND, IF NECESSARY, A PROPER SUM OF MONEY FOR HIS TRAVELLING AND ACCOMMODATION EXPENSES. THE SUMMONS, OF COURSE, LIKE A SUBPOENA, MUST, AMONG OTHER THINGS, STATE THE TIME AND PLACE AT WHICH THE PERSON IS REQUIRED TO ATTEND. IN THIS RESPECT, THE FORM OF SUMMONS ISSUED BY THE BOARD STIPULATES THE TIME AND PLACE AT WHICH THE WITNESS IS REQUIRED TO ATTEND AND THEN GOES ON TO STATE "AND SO FROM DAY TO DAY UNTIL THE HEARING IS CONCLUDED - -". A WITNESS PROPERLY SERVED WITH A SUMMONS IS, THEREFORE, REQUIRED TO ATTEND AND TO REMAIN IN ATTENDANCE THROUGHOUT THE HEARING AND FROM DAY TO DAY SO LONG AS HIS PRESENCE IS REQUIRED. WHERE THE HEARING DOES NOT CONTINUE FROM ONE DAY TO THE NEXT BUT IS ADJOURNED TO ANOTHER STATED DATE, THE WITNESS, UNLESS EXCUSED FROM ATTENDANCE, AND PROVIDED HE HAS RECEIVED PROPER CONDUCT MONEY AND ANY MONEY TO WHICH HE MAY BE ENTITLED FOR EXPENSES, IS ALSO REQUIRED TO ATTEND ON THE DATE STATED FOR CONTINUANCE OF THE HEARING. A WITNESS SUMMONED TO A HEARING WHICH IS ADJOURNED SINE DIE IS, HOWEVER, UNDER NO COMPULSION TO ATTEND A NEW HEARING UNLESS HE IS PERSONALLY SERVED WITH A FRESH SUMMONS REQUIR-

ING HIS ATTENDANCE AT THE TIME AND PLACE OF SUCH HEARING AND GIVEN PROPER CONDUCT MONEY AND SUCH MONEY FOR EXPENSES, IF ANY, AS HE MAY THEN BE ENTITLED, ACCORDING TO THE RULES FOLLOWED BY A COURT IN CIVIL CASES. IN OTHER WORDS, THE SERVICE OF THE SUMMONSES FOR THE PRIOR HEARING IS NOT, IN SUCH CIRCUMSTANCES, EFFECTIVE TO REQUIRE THE ATTENDANCE OF THE WITNESSES AT THE NEW HEARING."

7. IN DEALING WITH THE QUESTION OF THE BOARD ORDERING THE ISSUANCE OF A BENCH WARRANT, THE BOARD IN THE ABOVE CITED CASE, FURTHER STATED:

"WHERE A PERSON WHO HAS BEEN SERVED WITH A SUMMONS TO GIVE EVIDENCE DOES NOT ATTEND OR REMAIN IN ATTENDANCE AT A HEARING AS REQUIRED, THE BOARD WILL NOT CONSIDER THE ISSUANCE OF A WARRANT FOR HIS ARREST AS A DEFAULTING WITNESS UNLESS IT IS ESTABLISHED, (1) THAT THE SUMMONS HAS BEEN SERVED IN STRICT COMPLIANCE WITH ALL THE REQUIREMENTS IMPOSED BY A COURT IN CIVIL CASES AND (2) THAT THE PRESENCE OF SUCH PERSON IS MATERIAL TO THE ENDS OF JUSTICE. (SEE RULE 275 OF THE CONSOLIDATED RULES OF THE SUPREME COURT). NEEDLESS TO SAY, THE ISSUANCE OF A WARRANT FOR THE ARREST OF A DEFAULTING WITNESS IS A MOST SERIOUS STEP AFFECTING THE PERSONAL LIBERTY OF THE INDIVIDUAL AND SHOULD NOT BE CONSIDERED BY THIS BOARD UNLESS THE CIRCUMSTANCES PLAINLY SUBSTANTIATE THE NECESSITY FOR SUCH ACTION."

8. TAKING INTO ACCOUNT THE PRINCIPLES ABOVE CITED AND HAVING REGARD IN PARTICULAR TO THE SPECIAL CIRCUMSTANCES OF THIS CASE, WE ARE OF THE OPINION THAT THIS IS NOT A CASE IN WHICH A BENCH WARRANT SHOULD BE ISSUED, AND THE REQUEST OF THE APPLICANT IN THIS REGARD IS THEREFORE DENIED.

9. THE MATTER IS ACCORDINGLY REFERRED TO THE REGISTRAR FOR CONTINUATION OF HEARING.

1189-71-R: MECHANICAL CONTRACTORS ASSOCIATION HAMILTON (APPLICANT) V. THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL UNION 67 (RESPONEENT) V. METROPOLITAN HAMILTON HOUSE BUILDERS' ASSOCIATION (INTERVENER #1) V. PIPE LINE CONTRACTORS ASSOCIATION OF CANADA (INTERVENER #2).

BEFORE: G.W. REED, Q.C., CHAIRMAN, AND BOARD MEMBERS E. BOYER AND F.W. MURRAY.

APPEARANCES AT THE HEARING: W.S. COOK AND F.C. WHYTE FOR THE APPLICANT; STANLEY SIMPSON AND TREVOR BYRNE FOR THE RESPONDENT; NO ONE APPEARING FOR INTERVENER #1; R. C. FILION FOR INTERVENER #2.

DECISION OF THE BOARD: MARCH 22, 1972.

1. MR. J.A. MACDONALD, EXAMINER AND MR. N.J. HARPER, EXAMINER, ARE AUTHORIZED TO CONDUCT THE FOLLOWING INQUIRIES AND REPORT THE RESULTS THEREOF TO THE BOARD:

(A) TO OBTAIN THE INFORMATION REQUIRED TO COMPLETE THE EMPLOYER INTERVENTION IN FORM 68 TOGETHER WITH ITS ACCOMPANYING SCHEDULE "H" APPLICABLE TO THOSE EMPLOYERS THAT HAVE TO DATE FAILED TO MAKE THESE FILINGS IN ACCORDANCE WITH THE PROVISIONS OF SECTION 87 OF THE BOARD'S RULES OF PROCEDURE;

(B) TO OBTAIN THE INFORMATION NECESSARY TO COMPLETE THE FILINGS IN FORM 68 THAT HAVE BEEN MADE BY:

A.J. REINHARDT LIMITED (E-53)
 SAYNOR PLUMBING & HEATING LIMITED (E-55)
 BESTWAY ELECTRIC (HAMILTON) LTD. (F-10)
 POLY ACOUSTICS LTD. (F-39)

(C) TO OBTAIN FROM THOSE EMPLOYER INTERVENERS WHO HAVE NOT GIVEN SUFFICIENT DETAIL WITH RESPECT TO THE LOCATION OF THE JOB SITE, THE TYPE OF PROJECT, OR THE OCCUPATIONAL CLASSIFICATION OF THE LIST OF EMPLOYEES IN SCHEDULE "H", THE NECESSARY INFORMATION FOR THE BOARD TO MAKE A DETERMINATION AS TO WHETHER THE EMPLOYEES LISTED ARE AFFECTED BY THIS APPLICATION.

2. MR. J.A. MACDONALD, EXAMINER AND MR. N.J. HARPER, EXAMINER, ARE FURTHER AUTHORIZED TO INQUIRE INTO THE NATURE OF THE BUSINESS OF EAST END WELDING LTD. (F-19) AND LACKIE BROS. LTD. (F-29), IN ORDER TO DETERMINE THEIR STATUS AS EMPLOYERS AFFECTED BY THIS APPLICATION.

3. CERTAIN OF THE EMPLOYERS WHO HAVE FILED EMPLOYER INTERVEN-

TIONS IN FORM 68 HAVE INDICATED THAT THE WEEKLY PAYROLL PERIOD IMMEDIATELY PRECEDING THE DATE OF THE MAKING OF THIS APPLICATION WAS NOT A REPRESENTATIVE PERIOD FOR DETERMINING THE NUMBER OF EMPLOYEES NORMALLY EMPLOYED BY THE EMPLOYER INTERVENER. THE BOARD'S FORM 68 REQUIRES THE EMPLOYER MAKING SUCH REPRESENTATIONS TO GIVE DETAILS. ACCORDINGLY THE BOARD WILL NOT ENTERTAIN THESE REPRESENTATIONS FROM EMPLOYERS WHO HAVE NOT GIVEN ANY DETAILS CONCERNING THIS MATTER AND WHO HAVE NOT APPEARED AT THE HEARING. THOSE EMPLOYERS WHO HAVE INDICATED THAT THE WEEKLY PAYROLL PERIOD IN QUESTION IS NOT REPRESENTATIVE AND WHO HAVE GIVEN DETAILS WILL BE GIVEN AN OPPORTUNITY TO MAKE SUCH REPRESENTATIONS TO THE EXAMINERS APPOINTED IN THIS MATTER. THE EXAMINERS, MR. J.A. MACDONALD AND MR. N.J. HARPER WILL OBTAIN FROM THESE EMPLOYERS THREE ALTERNATE WEEKLY PAYROLL PERIODS DURING THE YEAR IMMEDIATELY PRECEDING OCTOBER 29, 1971, WHICH THE EMPLOYER INTERVENER CONSIDERS REPRESENTATIVE FOR DETERMINING THE NUMBER OF EMPLOYEES AFFECTED BY THIS APPLICATION TOGETHER WITH A SCHEDULE "H" FOR EACH SUCH PERIOD.

1291-71-U: GEORGE C. BAIRD (COMPLAINANT) V. LOCAL 647, INTERNATIONAL BROTHERHOOD OF TEAMSTERS (RESPONDENT) V. RUTHERFORD'S DAIRY LIMITED (INTERVENER).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND F. W. MURRAY.

APPEARANCES AT THE HEARING: PETER GILCHRIST AND GEORGE BAIRD FOR THE COMPLAINANT, T. ARMSTRONG, G. HARRISON AND S. MILLAR FOR THE RESPONDENT, W. E. MILLER FOR THE INTERVENER.

DECISION OF THE BOARD: MARCH 22, 1972.

1. THIS IS A COMPLAINT FOR RELIEF UNDER SECTION 79 OF THE LABOUR RELATIONS ACT WHEREIN IT WAS ALLEGED THAT THE RESPONDENT UNION HAD CONTRAVENED THE PROVISIONS OF SECTION 51A (NOW SECTION 60) OF THE ACT IN THAT IT FAILED TO PROCEED TO ARBITRATION WITH RESPECT TO A GRIEVANCE OF THE COMPLAINANT AGAINST THE INTERVENER EMPLOYER.

2. THE FACTS AGREED TO BY THE PARTIES WERE THAT THE COMPLAINANT HAD BEEN A LONG-TERM EMPLOYEE OF THE INTERVENER AND WAS A MEMBER OF THE RESPONDENT UNION FOR ABOUT TWENTY YEARS. THE COMPLAINANT HAD ALSO SERVED ON THE EXECUTIVE BOARD OF THE LOCAL UNION FROM 1952 TO 1956 AND HAD ALSO ACTED IN THE CAPACITY OF A BUSINESS AGENT OF THE UNION FOR A PERIOD OF TIME. IN 1956 THE COMPLAINANT HAD A DISPUTE WITH SOME OTHER UNION OFFICIALS OVER THE LEADERSHIP AND ACTIVITIES OF JAMES HOFFA WHO WAS AT THAT TIME PRESIDENT OF THE INTERNATIONAL UNION. AGAIN, IN 1968 THERE WAS SOME DISPUTE BETWEEN THE COMPLAINANT AND THE OFFICIALS OF

THE LOCAL UNION CONCERNING THE FACT THAT THE COMPLAINANT HAD ACTED AS A WITNESS FOR THE COMPANY AT AN ARBITRATION HEARING. HOWEVER, THE COMPLAINANT CONTINUED AS A MEMBER OF THE UNION UP TO 1970 AND THERE WERE APPARENTLY NO DISPUTES BETWEEN HIM AND OFFICIALS OF THE UNION SINCE 1968.

3. IN 1969 THE COMPLAINANT BECAME SIXTY-FIVE YEARS OF AGE, HOWEVER HE CONTINUED TO WORK AS A MEMBER OF THE BARGAINING UNIT. IN THE SPRING OF 1970 THE INTERVENER WAS ADVISED BY THE TRUSTEES OF THE UNION'S PENSION FUND THAT THE COMPLAINANT HAD PASSED THE RETIREMENT AGE AND SHOULD ACCORDINGLY BE DIRECTED BY THE COMPANY TO RETIRE. FOLLOWING REPRESENTATIONS MADE ON THE COMPLAINANT'S BEHALF BY THE INTERVENER, THE UNION AGREED IN JUNE 1970 TO PERMIT THE COMPLAINANT TO CONTINUE TO WORK UNTIL NOVEMBER 1, 1970 ON THE UNDERSTANDING THAT HE COULD NO LONGER PARTICIPATE IN THE UNION'S WELFARE FUND BECAUSE OF HIS AGE. THE COMPLAINANT WAS ADVISED OF THESE ARRANGEMENTS BY THE INTERVENER AND THE INTERVENER ARRANGED FOR THE COMPLAINANT'S OMSIP AND OHSIP COVERAGE TO COME UNDER THE OFFICE STAFF GROUP.

4. THE COMPLAINANT SUFFERED A HEART ATTACK IN AUGUST 1970 AND HIS LAST DAY WORKED WAS AUGUST 24TH. THE INTERVENER CONTINUED THE COMPLAINANT ON FULL SALARY UNTIL OCTOBER 17, 1970 AT WHICH TIME THE COMPLAINANT WAS ADVISED THAT THE INTERVENER WOULD NOT BE PAYING HIM ANY MORE MONEY. WHEN THE COMPLAINANT ADVISED THE INTERVENER THAT HE THOUGHT OTHER MONIES WERE OWING TO HIM, THE INTERVENER REPLIED THAT NO MONIES WERE OWING TO THE COMPLAINANT BUT INDEED THE COMPLAINANT OWED THE INTERVENER MONEY. THE INTERVENER THEN INSISTED THAT THE COMPLAINANT TAKE THE INTERVENER'S PAYROLL RECORDS IN ORDER TO SATISFY HIMSELF THAT NO MONEY WAS OWING.

5. THE COMPLAINANT'S CLAIM AGAINST THE INTERVENER WAS COMPRISED OF SEVEN ITEMS TOTALLING ALMOST \$900. MOST OF THE ITEMS INVOLVED CLAIMS WHICH THE COMPLAINANT ALLEGED AROSE IN 1970, HOWEVER PART OF THE CLAIM WAS ALLEGED TO HAVE ARISEN SEVEN YEARS EARLIER. FOR THE PURPOSE OF DETERMINING WHETHER THE UNION HAD BREACHED THE PROVISIONS OF SECTION 60 OF THE ACT, WE ASSUMED THAT AT LEAST PART OF THE COMPLAINANT'S CLAIM HAD MERIT AND WE ACCORDINGLY DID NOT INQUIRE INTO THE MERITS OF THE ITEMS CLAIMED BY THE COMPLAINANT SINCE TO DO SO WOULD INVOLVE CONSIDERABLE EVIDENCE AND ARGUMENT.

6. AFTER BEING ADVISED BY THE INTERVENER THAT NO MONIES WERE OWING TO THE COMPLAINANT, MR. BAIRD TELEPHONED THE EMPLOYMENT STANDARDS BRANCH OF THE DEPARTMENT OF LABOUR. HE WAS ADVISED TO TAKE UP THE MATTER WITH THE UNION AND HE THEN TELEPHONED MR. G. HARRISON, THE SECRETARY-TREASURER OF THE UNION. MR. BAIRD ATTEMPTED TO EXPLAIN THE NATURE OF HIS CLAIM TO MR. HARRISON BY TELEPHONE ON SEVERAL OCCASIONS, HOWEVER HE DID NOT REDUCE HIS CLAIM TO WRITING UNTIL FEBRUARY 1, 1970

ALTHOUGH MR. HARRISON TESTIFIED THAT HE HAD INVITED MR. BAIRD TO DO SO EACH TIME THAT MR. BAIRD TELEPHONED.

7. WHEN THE CLAIM WAS RECEIVED IN WRITING MR. HARRISON REFERRED THE MATTER TO THE UNION'S EXECUTIVE BOARD AND THE CLAIM WAS THEN ASSIGNED TO MR. MILLAR, THE UNION'S BUSINESS AGENT FOR INVESTIGATION. MR. MILLAR TELEPHONED MR. BAIRD AND ADVISED HIM THAT HE THOUGHT THAT THE GRIEVANCE WAS UNTIMELY BECAUSE OF THE EXTENSIVE DELAY IN SUBMITTING A WRITTEN GRIEVANCE TO THE EMPLOYER. WHEN MR. BAIRD INSISTED THAT THE UNION FILE A GRIEVANCE, MR. MILLAR AGREED TO ARRANGE A MEETING WITH THE EMPLOYER AND A MEETING WAS ACCORDINGLY ARRANGED WITH MR. RUTHERFORD, THE PRESIDENT OF THE INTERVENER ON MARCH 4, 1971. WHEN THE GRIEVANCE WAS DISCUSSED WITH MR. RUTHERFORD HE DENIED THAT ANY MONEY WAS OWING BY THE INTERVENER BUT THAT THE COMPLAINANT IN FACT OWED THE COMPANY MONEY. SINCE MR. BAIRD WAS NOT SATISFIED WITH THIS, MR. RUTHERFORD ENDED THE DISCUSSION BY TELLING HIM TO TAKE THE MATTER TO ARBITRATION. MR. MILLAR WAS APPARENTLY SYMPATHETIC TO MR. BAIRD'S CLAIM AT THAT TIME AND HE REFERRED THE MATTER BACK TO THE UNION'S EXECUTIVE BOARD. IT WAS THE UNION'S PRACTICE TO HAVE THE EXECUTIVE BOARD HOLD A VOTE ON ANY GRIEVANCE BEFORE SUBMITTING THE MATTER TO ARBITRATION.

8. DURING THE LATTER PART OF MARCH 1970, MR. MILLAR ADVISED MR. BAIRD THAT THE EXECUTIVE BOARD HAD VOTED AGAINST TAKING THE GRIEVANCE TO ARBITRATION BECAUSE OF THE LONG DELAY IN LODGING THE GRIEVANCE. AT THE HEARING IN THIS MATTER MR. BAIRD TESTIFIED DURING HIS EXAMINATION-IN-CHIEF THAT MR. MILLAR HAD ADVISED HIM THAT THE REASON THE UNION WOULD NOT TAKE THE GRIEVANCE TO ARBITRATION WAS BECAUSE OF MR. BAIRD'S ATTITUDE TOWARDS THE UNION AND HIS OPPOSITION TO MR. HOFFA. HOWEVER, DURING CROSS-EXAMINATION MR. BAIRD ADMITTED THAT HE HIMSELF HAD SUGGESTED THIS REASON TO MR. MILLAR AND HE FURTHER ACKNOWLEDGED THAT MR. MILLAR MAY HAVE REPLIED IN WORDS TO THE EFFECT THAT "YOU CAN BELIEVE WHAT YOU LIKE". HOWEVER, MR. BAIRD HAD DRAWN THE INFERENCE THAT MR. MILLAR HAD AGREED WITH HIS SUGGESTION.

9. NOTHING FURTHER HAPPENED BETWEEN THE LATTER PART OF MARCH 1971 AND JUNE 18, 1971 WHEN MR. BAIRD'S SOLICITORS WROTE TO THE UNION CONCERNING THE MATTER. AFTER PROLONGED DISCUSSIONS BY TELEPHONE AND LETTERS, THIS COMPLAINT WAS FILED ON NOVEMBER 25, 1971.

10. THE UNION TOOK THE POSITION THAT APART FROM ANY OTHER CONSIDERATION THE COMPLAINT UNDER SECTION 60 OF THE ACT WAS OUT OF TIME SINCE THAT SECTION OF THE ACT DID NOT COME INTO EFFECT UNTIL FEBRUARY 15, 1971. HOWEVER, THE COMPLAINANT TOOK THE POSITION THAT THE BREACH OF SECTION 60 OF THE ACT COMMENCED AFTER MARCH 4, 1971 WHEN THE EXECUTIVE BOARD OF THE UNION VOTED AGAINST TAKING THE MATTER TO ARBITRATION.

11. A COMPLAINT FOR RELIEF UNDER SECTION 79 OF THE ACT WHEREIN IT IS ALLEGED THAT THE UNION HAS VIOLATED THE PROVISIONS OF SECTION 60 INVOLVES A TWO-STAGE PROCEDURE. IN ORDER TO OBTAIN RELIEF, IT MUST FIRST BE ESTABLISHED THAT THE UNION HAS VIOLATED SECTION 60 IN THAT IT HAS ACTED IN A MANNER THAT IS ARBITRARY, DISCRIMINATORY OR IN BAD FAITH IN THE REPRESENTATION OF ANY OF THE EMPLOYEES IT REPRESENTS. IF IT IS DETERMINED THAT THE UNION HAS VIOLATED THE PROVISIONS OF SECTION 60, THE NEXT STAGE OF THE PROCEEDINGS INVOLVES A DETERMINATION OF THE AMOUNT OF LOSS SUSTAINED BY THE PERSON CONCERNED. IN OTHER WORDS, THE FACT THAT A UNION MIGHT HAVE ACTED IN BAD FAITH DOES NOT ESTABLISH THAT THE COMPLAINANT HAD A VALID OR MERITORIOUS CLAIM. ONCE A FINDING HAS BEEN MADE THAT A UNION HAS VIOLATED SECTION 60, EVIDENCE MUST BE ADDUCED TO ESTABLISH THAT THE PERSON CONCERNED HAS SUSTAINED LOSS AS A RESULT THEREOF. IF THE PERSON CONCERNED HAS A GRIEVANCE AGAINST AN EMPLOYER WHICH THE UNION HAS FAILED TO PROCESS THROUGH THE GRIEVANCE AND ARBITRATION PROCEDURES, THE COMPLAINANT MUST ESTABLISH THAT THAT CLAIM WOULD LIKELY HAVE SUCCEEDED IF FAIRLY PRESENTED. THERE IS THEREFORE AN ONUS ON THE COMPLAINANT DURING THE SECOND STAGE OF AN INQUIRY OF THIS NATURE TO ESTABLISH THAT AN ARBITRATION BOARD WOULD LIKELY HAVE GIVEN EFFECT TO HIS CLAIM. IN THIS RESPECT, THIS BOARD WOULD HAVE TO ASSESS THE CLAIM IN THE SAME MANNER AS AN ARBITRATION BOARD (SEE FISHER V. PEMBERTON ET AL. [1970] 8 D.L.R. (3d) 521).

12. HOWEVER, IF THE COMPLAINANT FAILS TO ESTABLISH THAT THE UNION HAS VIOLATED THE PROVISIONS OF SECTION 60, NO INQUIRY NEED BE MADE INTO THE MERITS OF THE COMPLAINANT'S CLAIM AGAINST HIS EMPLOYER. IT IS RECOGNIZED THAT IN SOME CASES THE EVIDENCE CONCERNING THE MERITS OF THE CLAIM AND THE EVIDENCE CONCERNING THE ALLEGED VIOLATION OF SECTION 60 WILL BE COMPLETELY SEPARATE AND SEVERABLE. HOWEVER, IT IS FURTHER RECOGNIZED THAT THE EVIDENCE CONCERNING THE TWO ISSUES MAY BE INTERMINGLED AND INSEPARABLE SO THAT ALL THE EVIDENCE WOULD HAVE TO BE HEARD AT ONE TIME. IN THE INSTANT CASE, WE ASSUMED THAT THE COMPLAINANT'S CLAIM AGAINST THE EMPLOYER HAD MERIT, AT LEAST IN PART, AND WE THEREFORE CONFINED OUR INITIAL INQUIRY TO THE QUESTION CONCERNING THE ALLEGED VIOLATION OF SECTION 60 OF THE ACT.

13. THE COMPLAINANT ARGUED THAT THE DUTY IMPOSED ON THE UNION BY SECTION 60 OF THE ACT WAS A VERY HIGH DUTY IN VIEW OF THE FACT THAT THERE HAS ALWAYS BEEN A DUTY AT COMMON LAW THAT A UNION FAIRLY REPRESENT ITS MEMBERS AND ACCORDINGLY THERE WOULD HAVE BEEN NO NEED FOR THE LEGISLATURE TO CODIFY THIS DUTY UNDER THE ACT UNLESS THE LEGISLATURE INTENDED TO IMPOSE AN EVEN HIGHER DUTY THAN EXISTED AT COMMON LAW.

14. WITH THIS CONTENTION WE CANNOT AGREE. THE DUTY OF FAIR REPRESENTATION IMPOSED BY SECTION 60 OF THE ACT IS AS THEREIN SET OUT. THE BOARD CANNOT ADD TO THE NATURAL MEANING OF THE WORDS USED BY THE LEGISLATURE. THE PURPOSE OF SECTION 60 PERMITS AN AGGRIEVED EMPLOYEE

TO APPLY FOR RELIEF UNDER SECTION 79 AS THE COMPLAINANT HAS DONE IN THIS CASE. IT ALSO PERMITS AN EMPLOYEE TO APPLY FOR CONSENT TO PROSECUTE FOR AN ALLEGED BREACH OF THAT SECTION. HAD SECTION 60 NOT BEEN ENACTED, NEITHER RELIEF WOULD BE AVAILABLE UNDER THE ACT AND A PERSON WOULD HAVE TO SEEK HIS REMEDY AT COMMON LAW. THE DUTY IMPOSED BY SECTION 60 IS NOT DISSIMILAR TO THE DUTY DESCRIBED IN THE FISHER V. PEMBERTON CASE REFERRED TO ABOVE. A UNION NOW HAS THE STATUTORY OBLIGATION AND RESPONSIBILITY OF REPRESENTING THE INTERESTS OF ALL EMPLOYEES FAIRLY AND IMPARTIALLY AND WITHOUT HOSTILITY. THE UNION CANNOT ACT ARBITRARILY BUT MUST ACT ON THE AVAILABLE EVIDENCE. THE UNION CANNOT ACT IN A DISCRIMINATORY MANNER BUT MUST REPRESENT EACH BARGAINING UNIT EMPLOYEE IN THE SAME MANNER AND WITHOUT DISTINCTION. THERE MUST ALSO BE AN ABSENCE OF BAD FAITH IN THE MANNER IN WHICH A UNION REPRESENTS THE EMPLOYEES IN A BARGAINING UNIT. THE DUTY IMPOSED BY SECTION 60 DOES NOT REQUIRE THE BOARD TO ASSESS THE QUALITY OF REPRESENTATION IN AN ABSTRACT WAY. THE BOARD NEED ONLY DETERMINE WHETHER THE UNION HAS REPRESENTED ALL EMPLOYEES IN THE BARGAINING UNIT IN THE SAME MANNER. IN OTHER WORDS, A UNION MAY MAKE A MISTAKE IN THE MANNER IN WHICH IT REPRESENTS EMPLOYEES; HOWEVER, IF THAT MISTAKE WAS MADE IN GOOD FAITH AND WITHOUT MALA FIDES, IT CANNOT BE FOUND THAT THE UNION HAS VIOLATED THE PROVISIONS OF SECTION 60.

15. AS STATED IN THE FISHER V. PEMBERTON CASE AT P. 546, "... THE STANDARDS OF A PROFESSIONAL ADVOCATE CANNOT BE IMPOSED UPON THE UNION OFFICIALS WHO WERE INVOLVED..." WHILE THE UNION OFFICIALS IN THIS INSTANCE WERE EXPERIENCED, THEY WERE NOT PROFESSIONAL ADVOCATES OR LAWYERS AND ACCORDINGLY THE DUTY OF CARE IMPOSED ON UNION OFFICIALS IS NOT THE SAME AS THAT IMPOSED ON LAWYERS.

16. AS STATED IN THE VACA V. SIPES CASE, [1967] 386 U.S. 171, 55 LC 911, 731, "IN ADMINISTERING THE GRIEVANCE AND ARBITRATION MACHINERY AS STATUTORY AGENT OF THE EMPLOYEES, A UNION MUST, IN GOOD FAITH AND IN A NONARBITRARY MANNER, MAKE DECISIONS AS TO THE MERITS OF PARTICULAR GRIEVANCES."

17. ON THE EVIDENCE IN THE INSTANT CASE, WE FIND THAT THERE IS NOTHING TO ESTABLISH THAT THE UNION DID OR FAILED TO DO ANYTHING AFTER FEBRUARY 15, 1971 WHEN SECTION 60 CAME INTO OPERATION WHICH WOULD CAUSE US TO FIND THAT THE UNION HAS VIOLATED THE PROVISIONS OF SECTION 60. ON THE CONTRARY, WHEN THE GRIEVANCE WAS FIRST REFERRED TO THE UNION ON FEBRUARY 1ST, THE UNION COULD HAVE REFUSED TO PROCESS THE GRIEVANCE AT THAT TIME WITHOUT ANY FEAR OF VIOLATING THE PROVISIONS OF SECTION 60 SINCE IT HAD NOT AS YET BEEN PROCLAIMED. HOWEVER, THE UNION PROCLAIMED. HOWEVER, THE UNION PROCESSED THE GRIEVANCE IN THE USUAL MANNER AND REFERRED THE GRIEVANCE TO ITS BUSINESS AGENT FOR INVESTIGATION. ALTHOUGH THE BUSINESS AGENT WAS OF THE VIEW THAT IT WAS UNTIMELY, HE TOOK THE NECESSARY STEPS TO ARRANGE A MEETING WITH THE EMPLOYER IN

ORDER TO RESOLVE THE DISPUTE. WHEN NO SUCCESSES WAS ACHIEVED AT THE MEETING OF MARCH 4TH, THE MATTER WAS REFERRED BACK TO THE EXECUTIVE BOARD BEFORE PROCEEDING TO ARBITRATION IN ACCORDANCE WITH THE UNION'S REGULAR PRACTICE. AFTER CONSIDERING THE GRIEVANCE, THE EXECUTIVE BOARD VOTED NOT TO PROCEED TO ARBITRATION BECAUSE OF THE TIME LIMITATIONS CONTAINED IN THE COLLECTIVE AGREEMENT. ALTHOUGH THE COMPLAINANT THOUGHT HE HAD REASONS FOR ALL THE DELAY THAT OCCURRED, THESE REASONS WERE NOT CONTRIBUTED TO BY THE EMPLOYER AND THE EMPLOYER COULD NOT BE HELD RESPONSIBLE FOR THEM. MOST OF THE CLAIMS AROSE PRIOR TO THE LAST DATE WORKED BY THE COMPLAINANT. THE QUESTION OF TIMELINESS WAS THEREFORE A VERY REAL ISSUE IN A CLAIM OF THIS NATURE. IT MUST BE REMEMBERED THAT THE COMPLAINANT WAS VERY EXPERIENCED IN UNION AFFAIRS HAVING SERVED FOR APPROXIMATELY FOUR YEARS ON THE UNION'S EXECUTIVE BOARD AND HAVING ACTED FOR A TIME IN THE CAPACITY OF A BUSINESS AGENT. ANY DELAY THAT OCCURRED IN THIS MATTER MUST THEREFORE BY THE SOLE RESPONSIBILITY OF THE COMPLAINANT. HE KNEW OR SHOULD HAVE KNOWN THAT THE COLLECTIVE AGREEMENT REQUIRED HIS GRIEVANCE TO BE SUBMITTED IN WRITING. HE WAITED UNTIL FEBRUARY 1ST TO REDUCE HIS CLAIM TO WRITING. ON READING THE CLAIM SUBMITTED ON FEBURARY 1ST, IT CANNOT BE FOUND THAT IT WAS WITHOUT AMBIGUITY. WHILE THE COMPLAINANT MAY HAVE HAD DISPUTES WITH UNION OFFICIALS SEVERAL YEARS PRIOR TO THE EVENTS IN QUESTION, THE EVIDENCE FAILED TO ESTABLISH THAT THESE DISPUTES CAUSED THE UNION TO ACT IN AN ARBITRARY OR DISCRIMINATORY MANNER WITH RESPECT TO THE COMPLAINANT. ON THE CONTRARY, EVEN THOUGH THE COMPLAINANT HAD PASSED THE NORMAL RETIREMENT AGE, SPECIAL CONSIDERATION WAS GIVEN TO HIM IN JUNE 1970 WHEN HE WAS PERMITTED TO CONTINUE TO WORK. AGAIN, WHEN HIS GRIEVANCE WAS FILED, THE UNION ACTED ON THE MATTER WITHOUT UNDUE DELAY. THE UNION ALSO SET UP A MEETING WITH THE EMPLOYER TO DISCUSS THE GRIEVANCE AT THE REQUEST OF THE COMPLAINANT EVEN THOUGH IT WAS FELT THAT THE GRIEVANCE WAS OUT OF TIME.

18. THE COMPLAINANT IN THIS MATTER APPEARED TO HAVE THE FACILITY OF TWISTING EVERYTHING TO HIS OWN ADVANTAGE. WHEN THE EMPLOYER REFUSED THE COMPLAINANT'S CLAIM AT THE MEETING ON MARCH 4TH, HE CHOSE TO INTERPRET THE EMPLOYER'S STATEMENT "TO TAKE IT TO ARBITRATION" AS AN INVITATION BY THE EMPLOYER TO AGREE TO RESOLVE THE DISPUTE IN THAT MANNER RATHER THAN AN OUTRIGHT DENIAL OF THE CLAIM. HE REFUSED TO UNDERSTAND THE WORDS SPOKEN TO HIM IN THEIR NATURAL CONTEXT. AGAIN, IN HIS EXAMINATION-IN-CHIEF HE STATED THAT THE UNION'S BUSINESS AGENT HAD STATED THAT THE REASON THAT THE UNION WOULD NOT TAKE HIS GRIEVANCE TO ARBITRATION WAS BECAUSE OF HIS ATTITUDE TOWARDS THE UNICN AND HIS DISPUTES WITH THE UNION CONCERNING MR. HOFFA. IT WAS NOT UNTIL HE WAS CROSS-EXAMINED THAT HE ACKNOWLEDGED THAT HE HIMSELF HAD SUGGESTED THIS TO THE BUSINESS AGENT AS A REASON FOR THE UNION'S REFUSAL TO PROCEED TO ARBITRATION. THIS IS WHAT THE COMPLAINANT WANTED TO BELIEVE AND HE DREW THE INFERENCE TO THIS EFFECT.

19. ALTHOUGH IT IS NOT NECESSARY FOR THE BOARD TO DETERMINE WHETHER OR NOT THE UNION WAS CORRECT IN DECIDING THAT THE GRIEVANCE WAS UNTIMELY WHEN SUBMITTED TO THE UNION IN FEBRUARY 1971, THE EVIDENCE ESTABLISHES THAT THE UNION CONSIDERED THE GRIEVANCE IN A FAIR MANNER AND WITH DUE CONSIDERATION AND TOOK REASONABLE STEPS TO ATTEMPT TO RESOLVE THE GRIEVANCE IN FAVOUR OF THE COMPLAINANT. HAVING FAILED TO DO SO, THE UNION DETERMINED NOT TO PROCESS THE MATTER TO ARBITRATION BECAUSE IT APPEARED TO THE UNION TO BE UNTIMELY. IN VIEW OF THE DELAYS WHICH OCCURRED FOR WHICH MR. BAIRD IS RESPONSIBLE AND IN VIEW OF THE FACT THAT SOME OF THE CLAIMS DATE BACK SEVERAL MONTHS AND YEARS PRIOR TO THE LAST DATE WORKED BY HIM, WE FIND THAT THE UNION'S DECISION IN THIS CASE WAS NOT UNREASONABLE. A UNION HAS AN OBLIGATION NOT ONLY TO EACH INDIVIDUAL MEMBER BUT TO THE BARGAINING UNIT AS A WHOLE AND IF IT PROCESSES GRIEVANCE TO ARBITRATION THAT APPEAR TO HAVE VIRTUALLY NO CHANCE OF SUCCESS, IT WOULD DO SO TO THE DETRIMENT OF THE OTHER BARGAINING UNIT EMPLOYEES NOT ONLY BECAUSE OF THE EXPENSE INVOLVED BUT BECAUSE OF THE REPUTATION THE UNION WOULD THEN GAIN.

20. HAVING CONSIDERED ALL THE EVIDENCE AND THE REPRESENTATIONS OF THE PARTIES, WE FIND THAT THE COMPLAINANT HAS FAILED TO SATISFY THE ONUS ON HIM OF ESTABLISHING THAT THE UNION HAS ACTED IN A MANNER THAT IS ARBITRARY, DISCRIMINATORY OR IN BAD FAITH IN THE REPRESENTATION OF THE COMPLAINANT BY THE RESPONDENT.

21. THE COMPLAINT IS THEREFORE DISMISSED.

1287-71-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) v. J. E. MARTEL & SONS LUMBER LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: FRANK V. BOSCARIOL, VICE-CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND E. BOYER.

DECISION OF THE BOARD: MARCH 24, 1972.

1. PURSUANT TO THE DECISION OF THE BOARD IN THIS MATTER DATED MARCH 7, 1972, THE BOARD ORDERED THAT A REPRESENTATION VOTE BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN BARGAINING UNIT #1 AND BARGAINING UNIT #2.

2. BY LETTER DATED MARCH 20, 1972, THE RESPONDENT ADVISED THE BOARD, INTER ALIA, AS FOLLOWS:

"THE COMPANY OBJECTS TO THE APPOINTMENT BY THE UNION OF HAROLD RITCHIE OR WILF CHALMERS AS

SCRUTINEERS ON THE GROUNDS THAT THESE MEN ARE BOTH STAFF REPRESENTATIVE OF THE UNION AND WOULD HAVE A TENDENCY TO INFLUENCE VOTERS AT THE POLLS. IT IS OUR CONTENTION THAT THESE REPRESENTATIVES OR EITHER OF THEM SHOULD NOT BE ALLOWED ON THE COMPANY PREMISES UNTIL THE VOTE IS TO BE COUNTED IN ORDER TO INSURE THAT THE VOTERS HAVE THE RIGHT TO VOTE WITHOUT UN-DUE INFLUENCE. WE FURTHER CONTEND THAT THE SCRUTINEER OF THE UNION SHOULD BE A RANK AND FILE EMPLOYEE WHOSE CHIEF DUTY IS TO ASSIST IN THE IDENTIFICATION OF VOTERS AND THE CHOSEN UNION SCRUTINEERS ARE NOT RANK AND FILE EMPLOYEES NOR WOULD THEY BE FAMILIAR WITH ALL THE EMPLOYEES FOR IDENTIFICATION PURPOSES."

3. THE POLICY OF THE BOARD IN THIS REGARD IS CLEARLY SET OUT IN THE SWINGLINE OF CANADA LTD. CASE [1971] OLRB REP. P.710, WHERE THE RESPONDENT OBJECTED TO ONE MR. QUINN ACTING AS SCRUTINEER FOR THE APPLICANT UNION. AT PAGE 711 THE BOARD STATED:

"THE CHOICE OF A SCRUTINEER TO REPRESENT THE PARTIES ON THE TAKING OF A REPRESENTATION VOTE IS NOT A MATTER OVER WHICH THE BOARD EXERCISES CONTROL. IT SHOULD BE POINTED OUT, HOWEVER, THAT THE CHOICE OF A SCRUTINEER MAY GIVE RISE TO A SUBSEQUENT CHALLENGE WITH RESPECT TO THE CONDUCT OF A VOTE AND THE PARTIES SHOULD, IN ACCORDANCE WITH THE REGISTRAR'S DIRECTION, ATTEMPT TO CHOOSE A RANK-AND-FILE EMPLOYEE WHOSE PRESENCE AT THE POLLING STATION WOULD NOT ADVERSELY AFFECT THE EXERCISE OF AN EMPLOYEE'S FREE CHOICE IN THE REPRESENTATION VOTE. IF THERE IS EVIDENCE THAT MR. QUINN'S PRESENCE AT THE POLL DURING THE TAKING OF THE VOTE ADVERSELY AFFECTED THE ABILITY OF THE VOTERS TO EXPRESS THEIR TRUE WISHES, ALLEGATIONS CAN BE MADE WITH RESPECT TO THE MATTER FOLLOWING THE TAKING OF THE VOTE."

4. IN THESE CIRCUMSTANCES, THE BOARD IS ACCORDINGLY NOT PREPARED TO ISSUE ANY DIRECTION WITH RESPECT TO THE CHOICE OF SCRUTINEERS BY THE PARTIES IN THIS MATTER.

1697-71-P: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (APPLICANT) V. NORTHERN ELECTRIC COMPANY LIMITED (RESPONDENT) V. CANADIAN UNION OF COMMUNICATION WORKERS (INTERVENER #1) V. UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) (INTERVENER #2).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS H.J.F. ADE AND O. HODGES.

DECISION OF THE BOARD:

MARCH 24, 1972.

1. THIS IS AN APPLICATION FOR CERTIFICATION WHEREIN THE APPLICANT, INTERVENER #1, AND INTERVENER #2 HAVE EACH APPLIED FOR CERTIFICATION AND HAVE EACH REQUESTED THAT A PRE-HEARING REPRESENTATION VOTE BE TAKEN.
2. THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT CANADIAN UNION OF COMMUNICATION WORKERS, INTERVENER #1, IS THE SAME ENTITY WHICH WAS FORMERLY KNOWN AS NORTHERN ELECTRIC EMPLOYEES' ASSOCIATION. THE BOARD THEREFORE FINDS THAT THE APPLICANT, INTERVENER #1, AND INTERVENER #2 ARE EACH A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(N) OF THE LABOUR RELATIONS ACT.
3. IT APPEARS TO THE BOARD ON AN EXAMINATION OF THE RECORDS OF THE APPLICANT AND THE RECORDS OF THE RESPONDENT THAT NOT LESS THAN THIRTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE VOTING CONSTITUENCY HEREINAFTER DESCRIBED WERE MEMBERS OF THE APPLICANT AT THE TIME THE APPLICATION WAS MADE.
4. IT APPEARS TO THE BOARD ON AN EXAMINATION OF THE RECORDS OF INTERVENER #1 AND THE RECORDS OF THE RESPONDENT THAT NOT LESS THAN THIRTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE VOTING CONSTITUENCY HEREINAFTER DESCRIBED WERE MEMBERS OF INTERVENER #1 AT THE TIME THE APPLICATION WAS MADE.
5. IT APPEARS TO THE BOARD ON AN EXAMINATION OF THE RECORDS OF INTERVENER #2 AND THE RECORDS OF THE RESPONDENT THAT NOT LESS THAN THIRTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE VOTING CONSTITUENCY HEREINAFTER DESCRIBED WERE MEMBERS OF INTERVENER #2 AT THE TIME THE APPLICATION WAS MADE.
6. THE BOARD DIRECTS THAT A PRE-HEARING REPRESENTATION VOTE BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN THE FOLLOWING VOTING CONSTITUENCY:

ALL EMPLOYEES OF THE RESPONDENT IN KINGSTON TOWNSHIP, SAVE AND EXCEPT SUPERVISORS, PER-

SONS ABOVE THE RANK OF SUPERVISOR,
REGISTERED NURSES, TECHNICAL OFFICE
AND CLERICAL EMPLOYEES, AND SECURITY
GUARDS.

7. THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT PERSONS CLASSIFIED AS INSTALLERS ARE NOT INCLUDED IN THE VOTING CONSTITUENCY.

8. THE BOARD FURTHER NOTES THE AGREEMENT OF THE PARTIES THAT THE EXCLUSION OF TECHNICAL EMPLOYEES ARE THOSE TECHNICAL EMPLOYEES EMPLOYED BY THE RESPONDENT IN ITS OFFICE.

9. ALL EMPLOYEES OF THE RESPONDENT IN THE VOTING CONSTITUENCY ON THE 15TH DAY OF MARCH, 1972 WHO HAVE NOT VOLUNTARILY TERMINATED THEIR EMPLOYMENT OR WHO HAVE NOT BEEN DISCHARGED FOR CAUSE BETWEEN THE 15TH DAY OF MARCH, 1972 AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

10. VOTERS WILL BE GIVEN A CHOICE BETWEEN INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW), OR CANADIAN UNION OF COMMUNICATION WORKERS, OR UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE), OR NO TRADE UNION.

11. THE MATTER IS REFERRED TO THE REGISTRAR.

139-70-M: ANTHONY J. VIS (APPLICANT) V. THE HAMILTON BEVERAGE DISPENSERS UNION, LOCAL 197 (RESPONDENT TRADE UNION) V. SHERATON LIMITED - SHERATON-CONNAUGHT HOTEL (RESPONDENT EMPLOYER).

BEFORE: O.B. SHIME, VICE-CHAIRMAN, AND BOARD MEMBERS J.D. BELL AND O. HODGES.

APPEARANCES AT THE HEARING: W.R. HERRIDGE FOR THE APPLICANT; TERRY T. HOWELL FOR THE RESPONDENT TRADE UNION; NO ONE APPEARING FOR THE RESPONDENT EMPLOYER.

DECISION OF O.B. SHIME, VICE-CHAIRMAN, AND BOARD MEMBER J.D. BELL: MARCH 23, 1972.

1. THIS IS AN APPLICATION UNDER SECTION 39 OF THE LABOUR RELATIONS ACT WHEREIN THE APPLICANT REQUESTS EXEMPTION FROM CERTAIN OBLIGATIONS TO THE RESPONDENT TRADE UNION BECAUSE OF HIS RELIGIOUS CONVICTION OR BELIEF. THIS PANEL OF THE BOARD SIMILARLY CONSTITUTED AS HAD THE OPPORTUNITY OF HEARING A NUMBER OF THESE CASES AND IN THE COURSE OF THOSE HEARINGS A VARIETY OF ARGUMENTS HAVE BEEN ADDRESSED

TO US. RATHER THAN DEAL WITH THE VARIOUS ARGUMENTS PIECEMEAL IN THE VARIOUS APPLICATIONS WE PREFER TO DEAL WITH THE TOTAL MATTER WITHIN THE CONFINES OF THIS DECISION AND MAKE REFERENCE WHERE NECESSARY TO OUR REASONS IN THIS MATTER. WE ALSO FEEL IT NECESSARY TO SET FORTH OUR VIEWS IN LIGHT OF THE DISSENT OF BOARD MEMBER OLIVER HODGES.

2. THE LABOUR RELATIONS ACT IS DESIGNED TO ENCOURAGE INDUSTRIAL PEACE THROUGH COLLECTIVE BARGAINING BETWEEN EMPLOYERS AND TRADE UNIONS. THE ACT REPRESENTS A VICTORY FOR PERSONS WHO HISTORICALLY HAD SOUGHT TO ASSOCIATE IN TRADE UNIONS FOR THE PURPOSE OF IMPROVING THEIR WAGES AND WORKING CONDITIONS. THEIR FREEDOM TO ASSOCIATE HAD BEEN IMPAIRED BY THE COMMON LAW. IN ORDER TO ENSURE THAT THEY COULD FREELY ASSOCIATE LABOUR LEGISLATION WAS ENACTED TO OVERCOME THE IMPEDIMENTS OF THE COMMON LAW AND THAT LEGISLATION RECOGNIZED THE RIGHT TO ASSOCIATE INTO TRADE UNIONS FOR THE IMPROVEMENT OF WAGES AND WORKING CONDITIONS. THAT RIGHT IS GUARANTEED IN SECTION 3 OF THE LABOUR RELATIONS ACT, R.S.O. 1970 c. 232 WHICH PROVIDES:

3. EVERY PERSON IS FREE TO JOIN A
TRADE UNION OF HIS OWN CHOICE AND TO
PARTICIPATE IN ITS LAWFUL ACTIVITIES.

3. IN OUR SOCIETY THE ASSERTION OF ONE FREEDOM MAY OFTEN CONFLICT WITH THE ASSERTION OF OTHER FREEDOMS. FOR EXAMPLE, BECAUSE A TRADE UNION MUST BY OPERATION OF LAW BE THE BARGAINING AGENT FOR AND REPRESENT ALL EMPLOYEES IN A PARTICULAR BARGAINING UNIT INDIVIDUAL EMPLOYEES LOSE THEIR FREEDOM TO CONTRACT ON AN INDIVIDUAL BASIS WITH THEIR EMPLOYER. INHERENT IN SECTION 39 OF THE ACT IS THE RECOGNITION THAT THE FREEDOM TO ASSOCIATE INTO TRADE UNIONS FOR COLLECTIVE BARGAINING AND THE PROTECTION AFFORDED TO THAT FREEDOM HAS COME INTO CONFLICT WITH FREEDOM OF RELIGION.

4. TRADE UNIONS WHICH ARE REQUIRED TO REPRESENT ALL EMPLOYEES IN A BARGAINING UNIT IN A FAIR AND HONEST MANNER HAVE SOUGHT SUPPORT FOR THEIR ACTIVITIES FROM ALL EMPLOYEES IN THE BARGAINING UNIT EITHER BY WAY OF MEMBERSHIP OR DUES PAYMENT. THERE ARE, OF COURSE, MANY PERSONS WHO OBJECT TO BEING MEMBERS OF CERTAIN TRADE UNIONS OR WHO OBJECT TO PAYING DUES OR OTHER ASSESSMENTS FOR INDIVIDUAL AND PERSONAL REASONS. NOTWITHSTANDING THESE INDIVIDUAL OBJECTIONS TRADE UNIONS HAVE BEEN PERMITTED TO COMPEL MEMBERSHIP OR DUES ON THE BASIS THAT THEY ARE REQUIRED BY LAW TO REPRESENT ALL THE EMPLOYEES IN THE BARGAINING UNIT. THIS BOARD HAS LONG HELD THE VIEW THAT BECAUSE INDIVIDUALS ARE REQUIRED TO SURRENDER THEIR INDIVIDUAL BARGAINING AND TRADE UNIONS ARE REQUIRED TO TAKE UP THOSE RIGHTS AND REPRESENT ALL THE EMPLOYEES THAT TRADE UNIONS MUST OPEN THEIR MEMBERSHIP TO ALL THOSE EMPLOYEES. IN OUR VIEW IT IS PART OF THE NECESSARY DEMOCRATIC PROCESS THAT EMPLOYEES HAVE A SAY AND BE PERMITTED TO PARTICIPATE IN THE AGENCY THAT IS COMPELLED BY LAW TO CONDUCT THEIR EMPLOYEMENT AFFAIRS.

5. TRADE UNIONS ARE ALSO OF THE VIEW THAT BECAUSE THEY ARE OBLIGATED TO REPRESENT ALL THE EMPLOYEES IN A FAIR AND HONEST WAY AND THAT IN SO DOING THEY INCUR CONSIDERABLE EXPENSE THAT THERE IS A RESPONSIBILITY ON ALL WHO SHARE IN THE BENEFIT OF THIS REPRESENTATION TO CONTRIBUTE. THUS, TRADE UNIONS THAT PROVIDE ECONOMIC RESEARCH, LEGAL ADVISE AND EXPERT ADVISORS TO EMPLOYEES FEEL THAT AT THE VERY LEAST THE EMPLOYEES WHO RECEIVE THE BENEFIT OF SUCH REPRESENTATION SHALL CONTRIBUTE TO THE EXPENSE OF PROVIDING SUCH BENEFITS. "FREE RIDERS" ARE CONSIDERED AN ANATHEMA BY THE TRADE UNION MOVEMENT AND BY THEIR DUES CONTRIBUTING EMPLOYEES; THE TRADE UNIONS CONSIDER THAT THE FAILURE BY EMPLOYEES TO CONTRIBUTE WHAT THEY CONSIDER TO BE THEIR FAIR SHARE OF THE EXPENSES WEAKENS THE TRADE UNION MOVEMENT AND SAPS THE STRENGTH OF THE CONCEPT OF FREE ASSOCIATION INHERENT IN THE LEGISLATION.

6. WHATEVER THE MERIT OF THAT PARTICULAR ISSUE THE LEGISLATURE OF THIS PROVINCE HAS DECIDED THAT ON BALANCE THE INTERESTS OF FREEDOM OF RELIGION DESERVE CONSIDERATION TO THE POINT OF EXEMPTION FROM TRADE UNIONS AND HAS ENACTED SECTION 39 TO PROVIDE THAT PERSONS WITH RELIGIOUS OBJECTIONS BY ORDER OF THIS BOARD MAY NOT BE REQUIRED TO BECOME MEMBERS OF A TRADE UNION OR TO PAY DUES TO THE TRADE UNION. THE LEGISLATURE HAS NOT PERMITTED THESE PERSONS TO BECOME FREE RIDERS, IN THE SENSE, THAT PERSONS EXEMPTED ARE REQUIRED TO PAY AN AMOUNT EQUIVALENT TO UNION DUES TO A CHARITABLE ORGANIZATION.

7. THE MERITS OF THE ISSUE HAVE THUS BEEN DECIDED BY THE LEGISLATURE. ON BALANCE IT HAS OPTED FOR FREEDOM OF RELIGION AND IT ONLY REMAINS FOR THIS BOARD TO DETERMINE WHETHER INDIVIDUALS COMPLY WITH THE LEGISLATION. THIS BOARD, AND QUITE PROPERLY SO, BECAUSE THE BALANCE OF FREEDOMS IN OUR DEMOCRATIC SOCIETY IS A MATTER FOR THE LEGISLATURE, IS NOT GIVEN THE AUTHORITY UNDER THE STATUTE TO WEIGH THE MERITS OF THE DEBATE BETWEEN FREEDOM OF ASSOCIATION AND FREEDOM OF RELIGION. OUR FUNCTION IS SIMPLY TO DETERMINE WHETHER AN INDIVIDUAL APPLICANT COMES WITHIN THE MEANING AND INTENTION OF THE STATUTORY EXEMPTION.

8. THERE ARE OTHER MATTERS THAT DESERVE COMMENT. FIRST, THERE IS THE EFFECT OF SECTION 12 OF THE ACT WHICH PROHIBITS THIS BOARD FROM CERTIFYING A TRADE UNION "IF IT DISCRIMINATES AGAINST ANY PERSON BECAUSE OF HIS RACE, CREED, COLOUR, NATIONALITY, ANCESTRY OR PLACE OF ORIGIN". THAT SECTION IS UNDOUBTEDLY OF SIGNIFICANT SOCIAL PURPOSE. IT IS TO ENSURE THAT CERTAIN DEMOCRATIC PRINCIPLES INDIGENOUS TO OUR WAY OF LIFE AND OUR INSTITUTIONS ARE REFLECTED IN TRADE UNIONS. SECTION 12 RECOGNIZES THOSE DEMOCRATIC PRINCIPLES AND ALSO RECOGNIZES THAT BECAUSE TRADE UNIONS ARE REQUIRED TO REPRESENT ALL EMPLOYEES IN A PARTICULAR BARGAINING UNIT THAT THE TRADE UNION PROVIDE THE BROADEST SPECTRUM FOR PERMITTING EMPLOYEES TO MEMBERSHIP. SECTION 12 IS DE-

SIGNED TO ALLOW THE FULLEST SCOPE FOR EMPLOYEE PARTICIPATION IN TRADE UNION AFFAIRS WHILE AT THE SAME TIME ENSURING THAT CERTAIN DEMOCRATIC SOCIAL VALUES INHERENT IN OUR SOCIETY ARE PRESENT IN TRADE UNIONS. IT SUPPORTS PARTICIPATORY DEMOCRACY IN A DEMOCRATIC INSTITUTION. WHAT SECTION 12 DOES NOT SPEAK TO IS THE ISSUE AS TO WHETHER CERTAIN PERSONS MAY GAIN EXEMPTION FROM TRADE UNIONS AFFAIRS. THAT IS AN ISSUE WHICH IS SEPARATELY DEALT WITH WITHIN THE CONFINES OF SECTION 39.

9. SECOND, THERE IS THE QUESTION OF DEFINING A RELIGIOUS CONVICTION OR BELIEF. IT HAS BEEN SUBMITTED THAT BEFORE THE BOARD CAN MAKE A DETERMINATION AS TO WHETHER AN EMPLOYEE HAS A "RELIGIOUS CONVICTION OR BELIEF" IT MUST DEFINE "RELIGIOUS". WE DOUBT THAT WE CAN ACCOMPLISH THIS RATHER HERCULEAN TASK IN A MANNER SATISFACTORY TO ALL. HOWEVER, THERE ARE MANY CASES THAT DO NOT REQUIRE AN EXHAUSTIVE DEFINITION OF "RELIGIOUS" TO ARRIVE AT A DETERMINATION. IT MAY BE THAT THERE ARE PERIPHERAL SITUATIONS WHERE AN APPLICANT'S "CONVICTION OR BELIEF" MUST BE TESTED AGAINST A DEFINITION OF "RELIGIOUS" BUT SUFFICE IT TO SAY THE APPLICANT IN THIS CASE DOES NOT STAND AT THE PERIPHERY OF WHAT MAY BE CONSIDERED TO BE A "RELIGIOUS CONVICTION OR BELIEF". WE ARE SATISFIED THAT THE APPLICANT WOULD FALL WITHIN ANY ATTEMPTED EXHAUSTIVE DEFINITION OF RELIGION THAT WE MIGHT MAKE.

10. RELATED TO THE ISSUE OF DEFINING RELIGIOUS IS THE ADDED DIFFICULTY OF ASSESSING THE INDIVIDUAL APPLICANTS. IT IS OBVIOUS THAT PERSONS PARTICIPATING IN THE DECISIONS OF THIS BOARD BRING WITH THEM A VARIETY OF CONVICTIONS AND BELIEFS - RELIGIOUS OR OTHERWISE. AN APPLICANT IS NOT TO STAND THE TEST OF OUR INDIVIDUAL VIEWS; WE MAY CONSIDER AN APPLICANT'S POSITION TO BE ILLFOUNDED, WE MAY DEEM IT TO BE WITHOUT BASIS IN FACT OR IN LOGIC, BUT NO MATTER HOW ILLFOUNDED OR INCOMPREHENSIBLE AN APPLICANT'S VIEW MAY APPEAR TO THIS BOARD WE ARE QUICK TO POINT OUT THAT WE ARE NOT TO SIT IN JUDGMENT ON THAT RELIGIOUS CONVICTION OR BELIEF, BUT WHAT WE ARE CONCERNED WITH IS DOES THE APPLICANT SINCERELY HAVE A RELIGIOUS CONVICTION OR BELIEF OR IS THE APPLICANT MERELY ATTEMPTING TO AVOID ITS OBLIGATIONS TO THE TRADE UNION BY FABRICATING A RELIGIOUS CONVICTION OR BELIEF.

11. THAT BRINGS US TO THE NEXT POINT PUT IN ISSUE IN SOME OF THE CASES AND THAT IS THE RELATIONSHIP BETWEEN THE APPLICANT AND OTHER INFLUENCES THAT MAY EMANATE FROM THE COMMITTEE ON JUSTICE AND LIBERTY WHICH WE UNDERSTAND IS A COMMITTEE SPONSORED BY A PARTICULAR RELIGIOUS INSTITUTION THAT APPEARS TO ASSOCIATE WITH A SEPARATE TRADE UNION. IN OUR VIEW IT IS NOT INCONSISTENT FOR AN APPLICANT UNDER THIS SECTION TO OBJECT TO A TRADE UNION THAT THE APPLICANT CONSIDERS TO BE SECULAR WHILE AT THE SAME TIME JOINING A TRADE UNION THAT THE APPLICANT CONSIDERS TO BE NONSECULAR. IT IS NOT TRADE UNIONISM OR COLLECTIVE BARGAINING THAT THE APPLICANT OBJECTS TO BUT IT IS RATHER THE RELIGIOUS OR

NON-RELIGIOUS NATURE OF THE PARTICULAR INSTITUTION THAT IS OBJECTED TO. SO TOO AN INDIVIDUAL MAY SEEK HIS EDUCATION IN A PRIVATE RELIGIOUS SCHOOL RATHER THAN A SECULAR SCHOOL; OR AN INDIVIDUAL MAY CHOOSE TO ENGAGE IN CERTAIN ACTIVITIES AT AN INSTITUTION WHICH DOES NOT DISCRIMINATE RATHER THAN AT AN INSTITUTION WHICH ENGAGES IN DISCRIMINATORY PRACTICES AGAINST CERTAIN SEGMENTS OF THE COMMUNITY. AGAIN, IT IS NOT EDUCATION IN THE FIRST CASE NOR THE INSTITUTIONAL ACTIVITIES IN THE SECOND THAT ARE OBJECTIONABLE BUT RATHER IT IS THE NATURE AND BELIEFS OF THE PARTICULAR INSTITUTION WHICH ARE OBJECTED TO. WE DO NOT HOLD IT INCONSISTENT OR IN ANY WAY NEGATING AN APPLICANT'S RELIGIOUS OBJECTION OR BELIEF IF SIMULTANEOUSLY AN APPLICANT IS PREPARED TO JOIN OR GIVE ALLEGIANCE TO ANOTHER INSTITUTION OR TRADE UNION WHICH IS MORE ACCEPTABLE BECAUSE IT MORE ACCURATELY REFLECTS THE RELIGIOUS VIEWS OF THE PARTICULAR APPLICANT.

12. NOR DO WE FIND ANYTHING SINISTER IN THE APPLICANT HAVING OUTSIDE ASSISTANCE IN THE BRINGING OF THIS APPLICATION. IT IS NOT UNKNOWN TO THE LEGAL PROCESS THAT INDIVIDUALS WITH CERTAIN BELIEFS SEEK THE AID OF OUTSIDE ORGANIZATIONS WHO HAVE THE RESOURCES AND ACUMEN TO ASSIST INDIVIDUAL ENDEAVOURS. THE LAW HAS SEEN CERTAIN RELIGIOUS GROUPS, RATEPAYERS GROUPS, TENANTS GROUPS, WELFARE RECIPIENT GROUPS, CIVIL LIBERTIES GROUPS AND THE LIKE PRESS INDIVIDUAL CLAIMS THROUGH THE LEGAL PROCESS IN ORDER TO SECURE INDIVIDUAL RIGHTS WHICH THOSE ORGANIZATIONS FEEL IS MERITORIOUS. BEFORE THIS BOARD IT IS NOT UNCOMMON TO SEE TRADE UNIONS FOR EXAMPLE TAKE UP THE CAUSE OF INDIVIDUAL EMPLOYEES WHO HAVE SUFFERED BECAUSE OF SOME UNFAIR LABOUR PRACTICE. THAT THESE GROUPS SEEK TO PRESS THEIR VIEWS IN COMPETITION WITH OTHER GROUPS IS NOT AN UNCOMMON OCCURENCE. IT MERELY REFLECTS THE RIGHTS OF FREE MEN TO HOLD DIFFERING OPINIONS AND IN OUR OPINION IT IS NECESSARY THAT THE LEGAL PROCESSES REMAIN OPEN AND AVAILABLE TO ALL PEOPLE TO SEEK REDRESS FOR THEIR VIEWS AND COMPLAINTS WHETHER SUCH VIEWS AND COMPLAINTS ARE LEGITIMATE OR NOT AND WHETHER THEY ARE BROUGHT TO THE LEGAL PROCESS BY A GROUP OR INDIVIDUAL OR BOTH IN CONCERT WITH EACH ACTING IN ITS OWN INTERESTS.

13. IN THE RESULT WE FIND THAT THE APPLICANT IS A SINCERELY RELIGIOUS PERSON AND BECAUSE OF HIS RELIGIOUS BELIEF SINCERELY HELD HE HAS COME TO THIS BOARD FOR EXEMPTION PURSUANT TO SECTION 39 OF THE ACT. WE FIND NO EVIDENCE OF AN ATTEMPT TO HIM TO SUBVERT THE INTENT OF SECTION 39. RATHER HE FINDS THAT THE RESPONDENT TRADE UNION IS NOT THE TYPE OF INSTITUTION WHICH HE WISHES TO JOIN OR TO PAY MEMBERSHIP. HE THEREFORE OBJECTS TO JOINING IT AND TO PAYING DUES.

14. ACCORDINGLY, IT IS ORDERED THAT THE APPLICANT IS NOT REQUIRED -

- (A) TO JOIN THE RESPONDENT TRADE UNION, TO BE OR TO CONTINUE TO BE A MEMBER OF THE TRADE UNION, AND
- (B) TO PAY ANY DUES, FEES OR ASSESSMENTS TO THE TRADE UNION PROVIDED THAT AMOUNTS EQUAL TO ANY DUES OR OTHER ASSESSMENTS ARE PAID BY THE APPLICANT OR ARE REMITTED BY SHERATON LIMITED - SHERATON-CONNAUGHT HOTEL TO A CHARITABLE ORGANIZATION MUTUALLY AGREED UPON BY THE APPLICANT AND THE RESPONDENT TRADE UNION. HOWEVER, IF THE APPLICANT AND THE RESPONDENT TRADE UNION FAIL TO SO AGREE THEN THE PARTIES SHOULD SO INFORM THE BOARD IN WRITING FORTHWITH INCLUDING SUCH REPRESENTATIONS, IF ANY, THAT EACH MAY CARE TO MAKE AS TO THE CHARITABLE ORGANIZATION TO BE DESIGNED AND THE BOARD WILL THEN DESIGNATE A CHARITABLE ORGANIZATION PURSUANT TO SECTION 39(1) OF THE LABOUR RELATIONS ACT.

DECISION OF BOARD MEMBER OLIVER HODGES: MARCH 23, 1972.

I DISSENT.

1. THE EVIDENCE IN CHIEF OF THE APPLICANT ANTHONY J. VIS WAS THAT HE IS A BAKER AND WAS A MEMBER OF THE CHRISTIAN BAKERY TRADE UNION IN HOLLAND BEFORE COMING TO CANADA IN 1950. HE TESTIFIED "IN HOLLAND I WAS ALWAYS A UNION MAN AND I FELT IT WAS MY DUTY HERE TO JOIN." HE JOINED THE "BARTENDERS UNION". AFTER A YEAR HE GOT A CONSTITUTION OF THE UNION, STUDIED IT AND REALIZED NOTHING IN IT REFERRED TO THE BIBLE OR THE LORD. HE THEN GOT OUT OF THE UNION, AFTER HAVING BEEN IN FOR 1 1/2 OR 2 YEARS. HE COULDN'T ATTEND MEETINGS OF THE UNION HELD ALWAYS ON SUNDAY, BECAUSE "SUNDAY IS THE LORD'S DAY." HOWEVER, BECAUSE OF A UNION SHOP PROVISION HE JOINED THE UNION AGAIN THREE YEARS AGO. HE TESTIFIED THAT "THE ONLY REASON FOR FAILING TO ATTEND UNION MEETINGS IS THAT THEY WERE HELD ON SUNDAY." SEVERAL OTHER PLACES WHERE HE SOUGHT EMPLOYMENT REQUIRED WORK ON SUNDAY.

2. RESPONDING TO A QUESTION BY HIS COUNSEL, MR. VIS SAID HE SUPPORTED THE BARTENDERS UNION AIMS CONCERNING BETTER WORKING CONDITIONS. HE SAID "THE BIBLE CALLED FOR DECENT PAY FOR DECENT WORK, AND IN THAT WAY THEY (THE BARTENDERS UNION) DO SUPPORT THE BIBLE. BUT THERE WAS MORE TO LIFE THAN GOOD WAGES AND WORKING CONDITIONS.

"ACCORDING TO THE BIBLE, THE LORD REQUESTS MEN TO LOVE NEIGHBORS AS YOURSELVES AND LOVE THE LORD AND WORK TO THAT GOAL." WHILE THE WITNESS SAID IT WAS A SIN TO JOIN THE BARTENDERS UNION, HE SAID "WE ARE ALL SINNERS, INCLUDING THE MINISTER." HE SAID HIS FELLOW CHURCH MEMBERS WERE "ALL BEHIND ME TO MAKE THIS APPLICATION."

3. ASKED BY HIS COUNSEL HOW HE FOUND OUT ABOUT THE LAW (CONCERNING THE PROVISION UNDER WHICH HE APPLIED FOR EXEMPTION ON THE GROUND OF RELIGIOUS BELIEF) HE TESTIFIED THAT HE "READ ABOUT IT IN THE HAMILTON SPECTATOR AND IN THE MAGAZINE OF THE CHRISTIAN LABOUR UNION, C.L.A.C., THE 'GUIDE'." THE "GUIDE" ADVISED HIM ABOUT THE COMMITTEE FOR JUSTICE AND LIBERTY, AND HE SUBSEQUENTLY OBTAINED APPLICATION FORMS AND ASSISTANCE TO GET OUT OF THE RESPONDENT UNION FROM THE COMMITTEE FOR JUSTICE AND LIBERTY.

4. ASKED BY HIS COUNSEL IF HE WAS A MEMBER OF THE CHRISTIAN LABOUR ASSOCIATION OF CANADA, HE REPLIED "YES I AM." HE FURTHER TESTIFIED HE JOINED C.L.A.C. IN 1951 "RIGHT AWAY WHEN I WAS ESTABLISHED IN CANADA." HE SAID "C.L.A.C. WAS BASED ON THE PRINCIPLES I WAS USED TO IN HOLLAND. THE WHOLE CONSTITUTION WAS BASED ON THE BIBLE AND MEETINGS OPENED WITH PRAYER AND A BIBLE READING." THE WITNESS IDENTIFIED HIS BIBLE AS THE KING JAMES VERSION - A NEW REVISED STANDARD VERSION WITH BETTER MODERN LANGUAGE. IN HOLLAND, THE WITNESS SAID, IT WAS THE "STATE'S BIBLE."

5. EXPLAINING THE TRADE UNION STRUCTURE IN HOLLAND AND HIS CHOICE OF UNION HERE, VIS SAID IN EVIDENCE IN CHIEF THERE WERE THREE CATEGORIES OF UNION OPERATING IN HOLLAND:

- (1) THE CHRISTIAN TRADE UNION WHICH WAS OPENED BY THE CHAIRMAN WITH PRAYER.
- (2) THE CATHOLIC TRADE UNION, ABOUT WHICH "I DON'T KNOW TOO MUCH."
- (3) THE NEUTRAL TRADE UNION, WHICH ANYONE CAN JOIN.

HE TESTIFIED THAT HE NEVER NEEDED THE NEUTRAL TRADE UNION.

6. THE EVIDENCE IN CHIEF OF TERRY HOWELL, SECRETARY-TREASURER OF THE RESPONDENT LOCAL 197, WAS THAT THE LOCAL HAS A PRAYER WITH WHICH IT OPENS IT MEETINGS. THIS OPENING CEREMONY IS CONDUCTED BY A CHAPLAIN APPOINTED BY THE EXECUTIVE OF THE LOCAL. THERE IS ALSO A CLOSING CEREMONY FOR MEETINGS. MEMBERS, HE FURTHER TESTIFIED, ARE ACCORDED A GRAVESIDE CEREMONY BY THE PRESIDENT AND THE CHAPLAIN.

ALL OF THE FOREGOING IS ACCORDING TO THE CONSTITUTION OF THE INTERNATIONAL UNION OF WHICH LOCAL 197 IS A PART.

7. THE TESTIMONY OF HOWELL IN CROSS-EXAMINATION WAS THAT LOCAL 197 "ENCOMPASSED ALL FORMS OF RELIGIOUS BELIEF." HE TESTIFIED FURTHER THAT HIS UNION EXPRESSED "NO SPECIFIC FAITH OR RELIGIOUS AIMS AND THAT ALL FAITHS WERE REPRESENTED IN THE UNION". HE SAID "IMPROVEMENTS FOR MEMBERS IS THE JOB OF THE UNION." HIS WAS A BELIEF PARALLEL TO A CHRISTIAN BELIEF, THE CHRISTIAN WAY, BUT NOT OF A PARTICULAR BRAND." HE SAID "AN ETHICAL CONCEPT WAS HELD BY HIS UNION."

8. SECRETARY-TREASURER HOWELL ALSO TESTIFIED IN CROSS-EXAMINATION THAT THE NATURE OF THE INDUSTRY IN WHICH HIS UNION HAD JURISDICTION, HOTELS AND RESTAURANTS, IS THAT "MOSTLY, SUNDAY WORK IS REQUIRED."

9. THERE IS NO DOUBT THAT MR. VIS IS A DEEPLY RELIGIOUS MAN, AND THAT HE IS MAKING, AS HIS COUNSEL SAID IN ARGUMENT, "A HORRIFIC SACRIFICE", WHEN ONE MEASURES HIS ECONOMIC COMMITMENT TO THE CHRISTIAN REFORMED CHURCH AND THE CHRISTIAN SCHOOLS WHICH HE SUPPORTS. TWENTY FIVE PERCENT OF HIS INCOME AFTER HIS MORTGAGE PAYMENT GOES TO SUPPORT HIS RELIGIOUS CONVICTION.

10. VIS IS A TRADE UNIONIST. HE HAS BEEN A MEMBER OF C.L.A.C. FOR TWENTY YEARS IN CANADA; EVER SINCE 1951, A YEAR AFTER HE LANDED. HE WAS A MEMBER OF THE CHRISTIAN RELIGIOUS UNION IN HOLLAND, SIMILAR TO C.L.A.C. HE IS NOW A MEMBER OF THE RESPONDENT "BARTENDERS UNION" TOO, AND HAS STUDIED ITS CONSTITUTION. HE IS QUALIFIED TO DISTINGUISH BETWEEN THE TWO UNIONS. NOW, BECAUSE S 39 APPEARS TO GIVE HIM AN OPPORTUNITY TO WITHDRAW SUPPORT FROM LOCAL 197, THE "BARTENDERS UNION", HE SEEKS EXEMPTION FROM MEMBERSHIP AND THE PAYMENT OF DUES TO LOCAL 197. IT IS MY OPINION THAT THE APPLICANT VIS ADVANCES A COMPETITIVE TRADE UNION, C.L.A.C., WITH HIS APPLICATION BASED ON S 39, AND ARGUED ON RELIGIOUS TERMS.

11. THE APPLICANT WAS "ALWAYS A UNION MAN" IN HOLLAND. ALL OF THE EVIDENCE IS THAT HE REMAINS A UNION MAN IN CANADA, ALTHOUGH HE PREFERS A RELIGIOUS UNION, WHICH IS A CHOICE THAT HE WAS ABLE TO MAKE IN HOLLAND. THE NATURE OF THE COLLECTIVE BARGAINING PRACTICE IN THAT COUNTRY, AS INDICATED BY HIS EVIDENCE SET OUT IN PARAGRAPH 5 ABOVE, ALLOWED THAT CHOICE. THE ONTARIO LABOUR RELATIONS ACT, S. 3 "FREEDOMS" STATES:

S3. "EVERY PERSON IS FREE TO JOIN A TRADE UNION OF HIS OWN CHOICE AND TO PARTICIPATE IN ITS LAWFUL ACTIVITIES."

HOWEVER, S.12 ERECTS A DISTINCT BAR AGAINST DISCRIMINATION BECAUSE OF "CREED", I.E. "RELIGIOUS BELIEF";

S.12 "THE BOARD SHALL NOT CERTIFY A TRADE UNION IF ANY EMPLOYER OR ANY EMPLOYERS' ORGANIZATION HAS PARTICIPATED IN ITS FORMATION OR ADMINISTRATION OR HAS CONTRIBUTED FINANCIAL OR OTHER SUPPORT TO IT OR IF IT DISCRIMINATES AGAINST ANY PERSON BECAUSE OF HIS RACE, CREED, COLOUR, NATIONALITY, ANCESTRY OR PLACE OF ORIGIN. R.S.O. 1970, c.232, s.12

IN THE CANADIAN MERCHANDISING EMPLOYEES UNION (APPLICANT) V. STEINBERG'S LIMITED (RESPONDENT) CASE, BOARD FILE 18979-70-R, M. R. JUNE 1971, P329 CHAIRMAN J. D. O'SHEA, Q.C., THE MEANING OF "CREED" AS IT APPEARED IN THIS SECTION (THEN S.10), WAS EXTENSIVELY DEALT WITH. IN THAT DECISION THE BOARD SAID:

PARA. 4. "IT WAS THE APPLICANT'S POSITION THAT "ANY PERSON WHO IS A MEMBER OF, OR SUBSCRIBES TO, OR SUPPORTS THE PRINCIPLES OF A COMMUNIST OR FASCIST PARTY OR SIMILAR ORGANIZATION, HAVING AS ITS PURPOSE TO OVERTHROW THE GOVERNMENT OF THE UNITED STATES OR OF CANADA, BY FORCE OR VIOLENCE, ETC." IS A PERSON WHO IS DISCRIMINATED AGAINST BY THE CONSTITUTIONAL PROVISION BECAUSE OF HIS "CREED" CONTRARY TO THE PURPOSE AND INTENT OF SECTION 10 OF THE ACT.

PARA. 5. THE SHORTER OXFORD ENGLISH DICTIONARY DEFINES "CREED" AS FOLLOWS: "A BRIEF SUMMARY OF CHRISTIAN DOCTRINE. MORE GENERALLY: A CONFESSION OF FAITH. A PROFESSED SYSTEM OF RELIGIOUS BELIEF; A SET OF OPINIONS ON ANY SUBJECT."

PARA. 6. IN BLACK'S LAW DICTIONARY "CREED" IS DEFINED AS "CONFESSION OR ARTICLES OF FAITH," "FORMAL DECLARATION OF RELIGIOUS BELIEF," "ANY FORMULA OR CONFESSION OF RELIGIOUS FAITH," AND "A SYSTEM OF RELIGIOUS BELIEF."

PARA. 7. THE CONSTITUTIONAL RESTRICTION

REFERRED TO ABOVE SEEMS TO BE THE RULE RATHER THAN THE EXCEPTION IN CONSTITUTIONS OF INTERNATIONAL UNIONS. A SIMILAR PROVISION MAY BE FOUND IN THE CONSTITUTIONS OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA; INTERNATIONAL UNION, ALLIED INDUSTRIAL WORKERS OF AMERICA; INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS; INTERNATIONAL UNION UNITED STEELWORKERS OF AMERICA; THE BROTHERHOOD OF PAINTERS, DECORATORS AND PAPERHANGERS OF AMERICA; AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA; INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW), TO NAME BUT A FEW.

PARA. 8. IT WAS THE APPLICANT'S POSITION THAT BELIEF OR MEMBERSHIP IN THE COMMUNIST PARTY OR A FASCIST PARTY WAS A "CREED" WITHIN THE MEANING OF SECTION 10 OF THE ACT.

PARA. 9. WHILE IT MAY BE POSSIBLE TO EXTEND THE MEANING OF THE WORK CREED TO INCLUDE SUCH BELIEFS, SINCE COMMUNISM OR FASCISM MAY BE CHARACTERIZED AS "A SET OF OPINIONS ON ANY SUBJECT" WITHIN THE MEANING OF THE DEFINITION OF CREED FOUND IN THE SHORTER OXFORD ENGLISH DICTIONARY, WE ARE OF THE VIEW THAT THE TERM "CREED" AS USED IN SECTION 10 PERTAINS TO RELIGIOUS BELIEF. COMMUNISM AND FASCISM ARE MORE IN THE NATURE OF POLITICAL MOVEMENTS OR PARTIES. IT IS ALSO NOTED THAT THE CONSTITUTIONAL RESTRICTION CONTAINED IN THE RETAIL CLERKS INTERNATIONAL ASSOCIATION'S CONSTITUTION PROHIBITS MEMBERSHIP BY PERSONS WHO BELONG TO THE ENUMERATED ORGANIZATIONS "HAVING AS ITS PURPOSE TO OVERTHROW THE GOVERNMENT OF THE UNITED STATES OR OF

CANADA, BY FORCE OR VIOLENCE... OR TO THROTTLE OR ELIMINATE A FREE TRADE LABOR MOVEMENT..." IT MAY WELL BE THAT AN ORGANIZATION WHICH IS NOMINALLY COMMUNIST WOULD NOT HAVE THE PURPOSES DESCRIBED ABOVE. IN ANY EVENT, WE ARE NOT PREPARED TO HOLD THAT MEMBERSHIP IN SUCH ORGANIZATIONS CONSTITUTES THE ADHERENCE TO A "CREED" WITHIN THE MEANING OF SECTION 10 OF THE ACT. IF THE APPLICANT'S INTERPRETATION OF THE TERM "CREED" AS USED IN SECTION 10 OF THE ACT IS SOUND, A UNION WOULD BE REQUIRED TO ACCEPT AS MEMBERS PERSONS WHO WERE DEDICATED TO THE DESTRUCTION OF THE UNION OR PERSONS WHO WERE VIOLENTLY OPPOSED TO ALL OF THE OBJECTS OF THE UNION. WE ARE NOT SATISFIED THAT THE LEGISLATURE INTENDED TO IMPOSE SUCH AN IMPOSSIBLE BURDEN ON UNIONS. THE USUAL AND COMMONLY ACCEPTED MEANING OF "CREED" PERTAINS TO RELIGIOUS BELIEF OR "FAITH" IN THE RELIGIOUS SENSE. IT IS THIS LATTER INTERPRETATION OF THE WORD "CREED" THAT WE PLACE ON THAT WORD AS USED IN SECTION 10 OF THE ACT.

PARA. 10. FOR THE REASONS SET OUT ABOVE, WE ARE UNABLE TO GIVE EFFECT TO THE APPLICANT'S ARGUMENTS WITH RESPECT TO THE STATUS OF THE RETAIL CLERKS INTERNATIONAL ASSOCIATION AND WE ACCORDINGLY FIND THAT THE APPLICANT'S CONSTITUTION DOES NOT DISCRIMINATE AGAINST ANY PERSON BECAUSE OF HIS CREED.

IT FOLLOWS FROM THE ABOVE ANALYSIS THAT A UNION OPERATING ON THE SAME PREMISE AS THE EVIDENCE IN THIS CASE ESTABLISHES TO BE THE PRACTICE IN HOLLAND, WOULD FIRST HAVE TO OVERCOME THE PROTECTION AGAINST RELIGIOUS DISCRIMINATION ASSURED BY S.12 (FORMERLY S. 10). IT THEREFORE FOLLOWS THAT S.3 "FREEDOMS" CANNOT BE TAKEN TO MEAN "A TRADE UNION OF HIS OWN CHOICE" IF THAT CHOICE IS FOR THE REASON OF "RELIGIOUS CONVICTION OR BELIEF", UNLESS OR UNTIL THE LABOUR RELATIONS ACT ALLOWS A UNION TO

DISCRIMINATE ON THE GROUND OF "CREED", WHICH IS TO SAY, "RELIGIOUS CONVICTION OR BELIEF."

12. IN MY JUDGMENT, S. 39 IS NOT INTENDED TO BE A BACK DOOR BY WHICH A PREFERENCE FOR A RELIGIOUS UNION CAN BE ADVANCED. TO GRANT THE APPLICANT'S REQUEST FOR EXEMPTION OF PAYMENT OF DUES WOULD TO A DEGREE WEAKEN THE ABILITY OF THE INCUMBENT BARGAINING AGENT TO EFFECTIVELY FUNCTION IN ITS DUTY TO REPRESENT ALL EMPLOYEES, WHICH IT MUST CONTINUE TO DO SO LONG AS IT CONTINUES TO HAVE THE SUPPORT OF A MAJORITY OF THE EMPLOYEES IN THE BARGAINING UNIT. THE ATTRITION OF DUES INCOME FOR ANY REASON WOULD HAVE A PROGRESSIVE, SELF-FEEDING EFFECT ON THE ABILITY OF THE INCUMBENT UNION TO MAINTAIN ITSELF AND TO MEET THE PUBLIC INTEREST CALLED FOR BY THE PREAMBLE TO THIS LEGISLATION:

THE LABOUR RELATIONS
ACT

R.S.O 1970, CHAPTER 232

WHEREAS IT IS IN THE PUBLIC INTEREST OF THE
PROVINCE OF ONTARIO TO FURTHER HARMONIOUS
RELATIONS BETWEEN EMPLOYERS AND EMPLOYEES BY
ENCOURAGING THE PRACTICE AND PROCEDURE OF
COLLECTIVE BARGAINING BETWEEN EMPLOYERS AND
TRADE UNIONS AS THE FREELY DESIGNATED REPRESENTATIVES OF EMPLOYEES.

PREAMBLE

THEREFORE, HER MAJESTY, BY AND WITH THE
ADVICE AND CONSENT OF THE LEGISLATIVE
ASSEMBLY OF THE PROVINCE OF ONTARIO, ENACTS
AS FOLLOWS:

13. IT IS CLEAR FROM THE PREAMBLE THAT THE VERY FOUNDATION OF THE ACT IS "TO FURTHER HARMONIOUS RELATIONS ... BY ENCOURAGING THE PRACTICE AND PROCEDURE OF COLLECTIVE BARGAINING BETWEEN EMPLOYERS AND TRADE UNIONS ...". FOR THIS VERY ELEMENTAL REASON, TEMPORAL THOUGH IT MAY BE, EXEMPTION GRANTED UNDER S.39(A) OR (B) MAY ONLY BE GRANTED ON THE VERY BEST EVIDENCE THAT NO MOTIVE OTHER THAN "RELIGIOUS CONVICTION OR BELIEF" IS RESPONSIBLE FOR THE APPLICATION. THIS APPLICANT SEEKS AN ORDER TO BE EXEMPTED UNDER S.39(A) FROM THE MEMBERSHIP PROVISIONS OF THE COLLECTIVE AGREEMENT, AND UNDER S.39(B), FROM PAYMENT OF DUES, ETC., UNDER THE CHECK OFF PROVISIONS OF THE COLLECTIVE AGREEMENT.

14. FOR THE REASONS GIVEN IN PARAGRAPH 10, 11 AND 12 ABOVE, IT IS CLEAR THAT THE APPLICANT WOULD HAVE GREATER PEACE OF MIND IF HE

WERE NOT REQUIRED TO BE A MEMBER OF LOCAL 197. EXEMPTION FROM MEMBERSHIP WOULD RELIEVE HIM OF ALL RESPONSIBILITY FOR THE ACTIVITY AND DECISIONS OF THAT UNION. HOWEVER, AS AN EMPLOYEE IN THE BARGAINING UNIT, HIS WAGES, FRINGE BENEFITS AND SENIORITY PROTECTION REMAIN AS CONDITIONS OF EMPLOYMENT NEGOTIATED BY LOCAL 197, AND THE TERMS AND CONDITIONS OF THE COLLECTIVE AGREEMENT CONTINUE TO APPLY TO HIM, EXCEPT FOR UNION MEMBERSHIP OR PAYMENT OF DUES, AS THE BOARD MAY ORDER. WE ARE HERE CONCERNED WITH A STATE OF MIND AND A STATED PREFERENCE OF ONE UNION RATHER THAN ANOTHER UNION.

15. THESE CIRCUMSTANCES ARE DIFFERENT THAN IN THE SIDER CASE, BOARD FILE 282-71-M, MURRAY J. SIDER V THE CANADIAN FOOD AND ALLIED WORKERS, ON BEHALF OF LOCAL P417 (CANADA PACKERS LIMITED) 15 DECEMBER 1971 MR. J. D. O'SHEA, Q.C., CHAIRMAN. IN THAT CASE, SIDER, A MEMBER OF A DENOMINATION CALLED THE BRETHREN IN CHRIST, GAVE NO EVIDENCE WHATSOEVER OF TRADE UNION INTEREST. HE NEVER JOINED THE UNION, BUT WENT ALONG BECAUSE THERE WAS NO WAY OUT. HE DIDN'T SEEK EXEMPTION OF DUES DIRECTLY FROM THE UNION BECAUSE OF HIS PERSONAL JUDGMENT CONCERNING THE UNION'S PROBABLE RESPONSE. HE TESTIFIED HIS CHURCH TAUGHT PACIFISM AND HE WAS A CONSCIENTIOUS OBJECTOR DURING WORLD WAR II. SIDER HAD NO MOTIVE BUT HIS RELIGIOUS CONVICTION. HE IS NOT A TRADE UNIONIST. THE INSTANT CASE IS ALSO DIFFERENT THAN THE CASE OF ALBERT GLOVER V. TEXTILE WORKERS UNION OF AMERICA (PENMAN'S LIMITED) BOARD FILE 1352-71-M, 29 DECEMBER 1971, MR. OWEN B. SHIME, CHAIRMAN. IN THAT CASE, GLOVER, A MEMBER OF THE CHRISTADELPHIAN CHURCH, DID NOT SIGN A DUES DEDUCTION CARD, WHICH ALSO INVOLVED UNION MEMBERSHIP. HE "COULD NOT SEE THAT SUBSCRIBING TO THE UNION IS FAITHFULNESS TO THE EMPLOYER" AND ALSO TESTIFIED THAT TO HIM "THE PRINCIPLES OF TRADE UNIONS ARE NOT CONSISTENT WITH CHRISTIAN PRINCIPLES AS OUTLINED IN THE SCRIPTURES". HIS EVIDENCE SHOWED NO TRADE UNION INTEREST WHATSOEVER. HE HAD NO MOTIVE OTHER THAN HIS RELIGIOUS CONVICTION. HE IS NOT A TRADE UNIONIST.

16. OBVIOUSLY, MR. VIS IS UNCOMFORTABLE AS A MEMBER OF TWO UNIONS. MY VIEW IS THAT HE SHOULD BE RELIEVED OF ALL RESPONSIBILITY FOR THE ACTIONS AND DECISIONS OF LOCAL 197 SO THAT HE MAY PURSUE HIS RELIGIOUS TRADE UNION ACTIVITY UNIMPEDED BY ANY MORAL COMMITMENT TO LOCAL 197 AND ITS MEMBERS. ACCORDINGLY, MY FINDING ON THIS PART OF THE APPLICATION UNDER S.39(1)(A), IS THAT ANTHONY J. VIS BE GRANTED EXEMPTION FROM MEMBERSHIP AS REQUIRED BY ARTICLE 5, CLAUSES A, B, C, AND D.

17. CLEARLY, MR. VIS IS A TRADE UNIONIST AND ACCEPTS THE WAGES AND WORKING CONDITIONS AT HIS PLACE OF EMPLOYMENT AS THE FRUIT OF TRADE UNION ENDEAVOUR. I AM NOT SATISFIED THAT THE PAYMENT OF DUES BY THE APPLICANT TO LOCAL 197 REPRESENTS FOR HIM AN INTOLERABLE SPIRITUAL HARDSHIP. ACCORDINGLY, MY FINDING ON THIS PART OF THE APPLICATION UNDER S. 39(1) (B) IS THAT ANTHONY J. VIS BE NOT GRANTED EXEMP-

TION FROM THE PAYMENT OF UNION DUES REQUIRED BY THE CHECK-OFF PROVISION OF THE COLLECTIVE AGREEMENT, ARTICLE 5, CLAUSE 6.

1619-71-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. CANADA SAFEWAY LIMITED (RESPONDENT).

BEFORE: O.B. SHIME, VICE-CHAIRMAN, AND BOARD MEMBERS O. HODGES AND H.F. IRWIN.

APPEARANCES AT THE HEARING: NELSON REED AND HAROLD G. JURCHUK FOR THE APPLICANT; NO ONE APPEARING FOR THE RESPONDENT.

DECISION OF THE BOARD: MARCH 24, 1972.

1. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(N) OF THE LABOUR RELATIONS ACT.

2. IN THIS CASE THE APPLICANT SUGGESTED A BARGAINING UNIT OF ALL EMPLOYEES OF THE RESPONDENT AT WENTWORTH COUNTY WITH CERTAIN EXCEPTIONS WHICH ARE NOT HERE MATERIAL. IN ITS REPLY THE RESPONDENT ADVISED THAT IT CONSIDERED THE UNIT DESCRIBED BY THE APPLICANT TO BE APPROPRIATE.

3. IT APPEARS THAT THE RESPONDENT COMPANY IS PRESENTLY EXTENDING ITS OPERATIONS INTO THE PROVINCE OF ONTARIO AND IS OPENING A NUMBER OF NEW STORES. IN AN EARLIER APPLICATION BY THE APPLICANT WITH RESPECT TO A STORE AT BRAMPTON THE APPLICANT FOUND ITSELF COMPETING WITH ANOTHER TRADE UNION TO REPRESENT THE EMPLOYEES AT THAT LOCATION. HOWEVER, THE APPLICANT WAS SUCCESSFUL AFTER A REPRESENTATION VOTE. THE REQUEST OF THE APPLICANT AND THE RESPONDENT FOR A CERTIFICATE COVERING ALL EMPLOYEES WITHIN THE COUNTY OF PEEL WAS OBJECTED TO BY THE INTERVENER TRADE UNION AND ACCORDINGLY THE BOARD LIMITED THE CERTIFICATE TO THE EMPLOYEES OF THE RESPONDENT AT BRAMPTON.

4. IN THIS CASE THE SITUATION IS SIMILAR ALTHOUGH THERE IS NOT ANOTHER COMPETING TRADE UNION. THE RESPONDENT HAS ONLY ONE STORE AT HAMILTON AND THE GRANTING OF A CERTIFICATE FOR THE COUNTY OF WENTWORTH WOULD HAVE THE EFFECT OF PREVENTING OTHER TRADE UNIONS FROM ORGANIZING EMPLOYEES AT ANY NEW STORES THAT THE RESPONDENT SOUGHT TO OPEN IN THE COUNTY, AND WOULD DENY THE EMPLOYEES AT THOSE LOCATIONS THE OPPORTUNITY TO SELECT A BARGAINING UNIT OF THEIR OWN CHOICE. FURTHER, IT HAS BEEN THE BOARD'S USUAL PRACTICE TO LIMIT BARGAINING UNITS TO MUNICIPALITIES.

5. THERE ARE MANY SITUATIONS WHERE WE ARE PREPARED TO DEPART FROM OUR PRACTICE ON THE AGREEMENT OF THE PARTIES AND THERE MAY BE OTHER SITUATIONS WHERE A COUNTY WIDE UNIT OF THE AGREEMENT OF THE PARTIES WOULD BE ACCEPTABLE. HOWEVER, IN THIS EVOLVING SITUATION

WHERE THERE IS ONLY ONE STORE AT HAMILTON WHICH IS A NEW STORE AND AFTER CONSIDERING THE EARLIER DECISION OF THIS BOARD DEALING WITH THIS MATTER, WE ARE NOT PREPARED TO ACCEDE TO THE REQUEST OF THE APPLICANT AND THE RESPONDENT FOR A COUNTY WIDE UNIT. WE RECOGNIZE THAT THERE WERE TWO SUBSEQUENT APPLICATIONS OTHER THAN PEEL COUNTY WHERE THE BOARD ACCEPTED THE AGREEMENT OF THE PARTIES. THIS DECISION, THEREFORE, IS TO BE TAKEN AS AFFIRMING OUR EARLIER DECISION THAT IN THESE PARTICULAR CIRCUMSTANCES WE ARE NOT PREPARED TO EXTEND THE BARGAINING UNIT BEYOND THE MUNICIPALITY.

6. HAVING REGARD THEREFORE TO THE SUBMISSIONS OF THE PARTIES THE BOARD FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT HAMILTON, SAVE AND EXCEPT ASSISTANT MANAGER, MEAT MANAGER, PERSONS ABOVE THE RANK OF ASSISTANT MANAGER, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

7. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN SIXTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON FEBRUARY 25, 1972, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 92(2)(J) OF THE LABOUR RELATIONS ACT.

8. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

1520-71-R: LUMBER AND SAWMILL WORKERS UNION LOCAL 2693 OF THE UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA (APPLICANT) V. ALGOMA MAINTENANCE & SERVICES LIMITED (RESPONDENT).

BEFORE: R.A. FURNESS, VICE CHAIRMAN AND BOARD MEMBERS E. BOYER AND H.F. IRWIN.

APPEARANCES AT THE HEARING: T.E. ARMSTRONG, C. EKHOLM AND L. RAINE FOR THE APPLICANT; J. O'DONOGHUE FOR THE RESPONDENT.

DECISION OF THE BOARD: MARCH 24, 1972.

1. THE NAME "ALGOMA MAINTENANCE AND SERVICES LIMITED" APPEARING IN THE STYLE OF CAUSE OF THIS APPLICATION AS THE NAME OF THE RESPONDENT IS AMENDED TO READ: "ALGOMA MAINTENANCE & SERVICES LIMITED".

2. THIS APPLICATION FOR CERTIFICATION WAS FILED ON JANUARY 26, 1972. PURSUANT TO SECTION 70 OF THE BOARD'S RULES OF PROCEDURE, THE LABORERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 607 (HEREINAFTER

REFERRED TO AS "LOCAL 607") WAS NOTIFIED OF THIS APPLICATION FOR CERTIFICATION. ON FEBRUARY 8, 1972, THE BOARD RECEIVED A TELEGRAM FROM LOCAL 607 INDICATING ITS INTENTION TO INTERVENE IN THIS APPLICATION AND THAT A FORM 57 (INTERVENTION, CONSTRUCTION INDUSTRY) WOULD FOLLOW. THE BOARD DID NOT RECEIVE A FORM 57, INTERVENTION, CONSTRUCTION INDUSTRY, FROM LOCAL 607.

3. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(N) OF THE LABOUR RELATIONS ACT.

4. THE BOARD FURTHER FINDS THAT THIS IS AN APPLICATION FOR CERTIFICATION WITHIN THE MEANING OF SECTION 108 OF THE LABOUR RELATIONS ACT.

5. AT THE HEARING IN THIS MATTER, REFERENCE WAS MADE TO AN ALLEGED COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND LOCAL 607 WHICH BY ITS TERMS PURPORTED TO COVER THE EMPLOYEES AFFECTED BY THIS APPLICATION. THIS ALLEGED COLLECTIVE AGREEMENT APPEARS TO INDICATE THAT IT WAS SIGNED ON MARCH 10, 1972 - SOME SIX WEEKS AFTER THE DATE OF THE FILING OF THIS APPLICATION FOR CERTIFICATION.

6. HAVING REGARD TO THE FOREGOING AND TO SECTION 5(1) OF THE LABOUR RELATIONS ACT, THE BOARD FINDS THAT THE ALLEGED COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND LOCAL 607 IS NOT A BAR TO THIS APPLICATION FOR CERTIFICATION AND THAT THIS APPLICATION FOR CERTIFICATION IS TIMELY.

7. THE APPLICANT AND THE RESPONDENT HAVE AGREED THAT THE OPERATIONS OF THE RESPONDENT AFFECTED BY THIS APPLICATION ARE PREDOMINATELY WITHIN THE DISTRICT OF KENORA AND THAT A SMALL PORTION OF THE OPERATIONS OF THE RESPONDENT ARE LOCATED WITHIN THE DISTRICT OF THUNDER BAY. ACCORDINGLY, IN THE SPECIAL CIRCUMSTANCES OF THIS APPLICATION AND PURSUANT TO SECTION 6(1) OF THE LABOUR RELATIONS ACT, THE BOARD FURTHER FINDS THAT ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE DISTRICT OF KENORA, INCLUDING THE PATRICIA PORTION, AND THAT PART OF THE RESPONDENT PROJECT AT THE MATTAHI MINE SITE LOCATED IN THE DISTRICT OF THUNDER BAY, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

8. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT NOT LESS THAN THIRTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON FEBRUARY 9, 1972, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 92(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

9. A REPRESENTATION VOTE WILL BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT. ALL EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

10. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BE REPRESENTED BY THE APPLICANT IN THEIR EMPLOYMENT RELATIONS WITH THE RESPONDENT.

11. THE MATTER IS REFERRED TO THE REGISTRAR.

1509-71-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 1089 (APPLICANT) V. COHEN CONSTRUCTION COMPANY (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: R.A. FURNESS, VICE CHAIRMAN AND BOARD MEMBERS E. BOYER AND H.F. IRWIN.

APPEARANCES AT THE HEARING: A.M. MINSKY AND ROCCO D'ANDREA FOR THE APPLICANT; JOHN M. WING, Q.C. FOR THE RESPONDENT; AGOSTINO MAOLA FOR THE GROUP OF EMPLOYEES.

DECISION OF THE BOARD: MARCH 27, 1972.

1. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(N) OF THE LABOUR RELATIONS ACT.

2. THE BOARD FURTHER FINDS THAT THIS IS AN APPLICATION FOR CERTIFICATION WITHIN THE MEANING OF SECTION 108 OF THE LABOUR RELATIONS ACT.

3. THE BOARD FURTHER FINDS THAT ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF LAMBTON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

4. THE BOARD HAS CAREFULLY CONSIDERED THE REPORT OF THE EXAMINER PRIOR TO, DURING AND AFTER THE REPRESENTATIONS OF THE PARTIES AT THE HEARING. HAVING REGARD TO THESE CIRCUMSTANCES, THE BOARD FINDS THAT AGOSTINO MAOLA IS A WORKING FOREMAN WHO NEITHER EXERCISES MANAGERIAL FUNCTIONS NOR IS EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND HE IS, THEREFORE, INCLUDED IN THE BARGAINING UNIT.

5. THE BOARD FINDS THAT FOR THE PURPOSES OF THE COUNT THERE WERE FOUR EMPLOYEES IN THE BARGAINING UNIT ON THE DATE OF THE MAKING OF THIS APPLICATION.

6. EVIDENCE OF MEMBERSHIP FILED BY THE APPLICANT CONSISTED OF CERTIFICATES OF MEMBERSHIP. HOWEVER, ONE OF THE CERTIFICATES OF MEMBERSHIP STATED:

"MY MONTHLY DUES OF \$7.50 ARE PAID FOR THE MONTH OF....197....".

7. THE APPLICANT ARGUED THAT THIS CERTIFICATE OF MEMBERSHIP INDICATED THAT THE PERSON CONCERNED HAD MADE A PAYMENT OF \$7.50 TO THE APPLICANT. THE APPLICANT REASONED THAT THE FACT THAT THE DATE AND YEAR MISSING WAS SIMPLY A TECHNICAL IRREGULARITY AND THAT PURSUANT TO SECTION 48(2) OF THE BOARD'S RULES OF PROCEDURE IT WAS ENTITLED TO ADDUCE ORAL EVIDENCE IN ORDER TO IDENTIFY AND SUBSTANTIATE THE DEFECTS IN THIS CERTIFICATE OF MEMBERSHIP. THE BOARD DOES NOT AGREE WITH THIS CONTENTION OF THE APPLICANT. THE PORTION OF THE CERTIFICATE OF MEMBERSHIP CITED ABOVE, IN OUR VIEWS, ENVISAGES NOT AN ISOLATED PAYMENT OF \$7.50 STANDING BY ITSELF BUT RATHER CONTEMPLATES A STATEMENT REGARDING THE PAYMENT OF MONTHLY DUE FOR A SPECIFIC MONTH IN A GIVEN YEAR. IF THE MONTH AND YEAR ARE OMITTED FROM SUCH A CERTIFICATE OF MEMBERSHIP, IT CANNOT BE SAID THAT THERE IS ANY INDICATION ON SUCH CERTIFICATE OF MEMBERSHIP THAT ANY MONEY PAYMENT HAS BEEN MADE AT ALL. THIS BEING THE CASE, SECTION 48(2) OF THE BOARD'S RULES OF PROCEDURE HAS NO APPLICATION SINCE THERE IS NOTHING TO IDENTIFY OR SUBSTANTIATE. THE BOARD THEREFORE FINDS THAT THE CERTIFICATE OF MEMBERSHIP REFERRED TO IN PARAGRAPH SIX HEREIN DOES NOT INDICATE THAT THE PERSON ON WHOSE BEHALF THE CERTIFICATE OF MEMBERSHIP HAS BEEN SUBMITTED IS A MEMBER WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT. THIS CERTIFICATE OF MEMBERSHIP IS THEREFORE NOT EVIDENCE OF MEMBERSHIP AS CONTEMPLATED BY THE LABOUR RELATIONS ACT. THE BOARD FINDS THAT THE APPLICANT HAS THEREFORE FILED EVIDENCE OF MEMBERSHIP WITH THE BOARD WITH RESPECT TO TWO OF THE FOUR PERSONS REFERRED TO IN PARAGRAPH 5 HEREIN.

8. THERE WAS FILED IN THIS MATTER, FIVE STATEMENTS OF DESIRE IN OPPOSITION TO THIS APPLICATION FOR CERTIFICATION. HOWEVER, IT IS NOT NECESSARY FOR THE BOARD TO INQUIRE INTO THE ORIGINATION, PREPARATION AND CIRCULATION OF THESE STATEMENTS OF DESIRE BECAUSE, EVEN IF THE BOARD WERE TO GIVE WEIGHT TO THESE STATEMENTS OF DESIRE, THE APPLICANT'S ENTITLEMENT TO A REPRESENTATION VOTE IN THIS MATTER WOULD NOT BE AFFECTED. SINCE THE BOARD HAS NOT INQUIRED INTO THE STATEMENTS OF DESIRE FILED IN THIS MATTER, IT IS ACCORDINGLY NOT NECESSARY FOR THE BOARD TO INQUIRE INTO THE ALLEGATIONS OF IMPROPER OR IRREGULAR CONDUCT FILED BY THE APPLICANT IN CONNECTION WITH THESE STATEMENTS OF DESIRE.

9. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT NOT LESS THAN THIRTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON FEBRUARY 4, 1972, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 92(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

10. A REPRESENTATION VOTE WILL BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT. ALL EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

11. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BE REPRESENTED BY THE APPLICANT IN THEIR EMPLOYMENT RELATIONS WITH THE RESPONDENT.

12. THE MATTER IS REFERRED TO THE REGISTRAR.

1161-71-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. QUEEN'S UNIVERSITY AT KINGSTON (RESPONDENT) v. GROUP OF EMPLOYEES. (OBJECTORS).

BEFORE: O.B. SHIME, VICE-CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND O. HODGES.

APPEARANCES AT THE HEARING: W.A. ACTON FOR THE APPLICANT; D.G. CUNNINGHAM, W. WRIGHT AND H. FLEMING FOR THE RESPONDENT; NO ONE APPEARING FOR THE GROUP OF EMPLOYEES.

DECISION OF THE BOARD: MARCH 24, 1972.

1. IN THIS CASE THE APPLICANT SUGGESTED A BARGAINING UNIT OF ALL EMPLOYEES IN THE PUBLIC RELATIONS DEPARTMENT OF THE RESPONDENT WHICH WAS COMPOSED OF FIVE PERSONS. ACCORDINGLY, AN EXAMINER WAS APPOINTED TO INQUIRE INTO THE APPROPRIATENESS OF THE BARGAINING UNIT AND INTO THE DUTIES AND RESPONSIBILITIES OF CERTAIN PERSONS WITHIN THE APPLICANT'S SUGGESTED BARGAINING UNIT.

2. HAVING REGARD TO THE REPORT OF THE EXAMINER DATED JANUARY 26, 1972, AND TO THE REPRESENTATIONS OF THE PARTIES WE DO NOT FIND THAT THE BARGAINING UNIT CLAIMED BY THE APPLICANT IS AN APPROPRIATE BARGAINING UNIT.

3. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT LESS THAN THIRTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN ANY BARGAINING UNIT WHICH THE BOARD MIGHT FIND TO BE APPROPRIATE, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON NOVEMBER 3, 1971, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 92(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

4. THE APPLICATION IS THEREFORE DISMISSED.

1163-71-R: THE ASSOCIATION OF PROFESSIONAL LIBRARIANS OF THE HAMILTON PUBLIC LIBRARY (APPLICANT) V. HAMILTON PUBLIC LIBRARY BOARD (RESPONDENT).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS F. W. MURRAY AND P. J. O'KEEFFE.

DECISION OF THE BOARD: MARCH 27, 1972.

THE APPLICANT BY LETTER DATED MARCH 14, 1972 HAS REQUESTED THE BOARD TO CLARIFY ITS DECISION DATED MARCH 3, 1972 IN THIS MATTER. IT WOULD APPEAR THAT THE APPLICANT CONFUSES OR PERHAPS EQUATES THE GRADE OF LIBRARIAN WITH THE MANAGERIAL CLASSIFICATION. IN ITS DECISION THE BOARD DID NOT CONCERN ITSELF WITH THE QUESTION OF WHETHER THE BRANCH HEADS OR THE DEPARTMENT HEADS WERE EITHER GRADE 2 OR GRADE 3 LIBRARIANS. THE BOARD'S ONLY CONCERN WAS THE MANAGERIAL FUNCTIONS EXERCISED BY THE BRANCH HEADS OR DEPARTMENT HEADS AS EVIDENCED IN THE EXAMINER'S REPORT. NO MATTER WHAT GRADE LIBRARIAN OCCUPIES THESE CLASSIFICATIONS, IF THE MANAGERIAL FUNCTIONS AS SET OUT IN THE EXAMINER'S REPORT ARE EXERCISED BY THEM, THE LIBRARIAN WOULD BE EXCLUDED FROM THE BARGAINING UNIT REGARDLESS OF GRADE. ON THE OTHER HAND, IF A GRADE 3 LIBRARIAN DOES NOT OCCUPY ONE OF THE EXCLUDED CLASSIFICATIONS AND DOES NOT EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT, SUCH GRADE 3 LIBRARIAN WOULD BE INCLUDED IN THE BARGAINING UNIT.

1661-71-R: INTERNATIONAL MOLDERS & ALLIED WORKERS UNION (APPLICANT) V. EXTRUDED PLASTIC PRODUCTS LTD. (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS H. ADE AND P. J. O'KEEFFE.

APPEARANCES AT THE HEARING: L. C. ARNOLD AND M. CAPRI FOR THE APPLI-

CANT; G. FERGUSON, Q.C., A. ZILIO AND F. A. COLLIER FOR THE RESPONDENT; D. M. CARRUTHERS FOR THE OBJECTORS.

DECISION OF THE BOARD: MARCH 27, 1972.

1. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(N) OF THE LABOUR RELATIONS ACT.

2. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

3. FOR PURPOSES OF CLARITY THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT THE EMPLOYEES OF THE RESPONDENT WORKING IN THE ENGINEERING DEPARTMENT FORM PART OF THE OFFICE STAFF AND ARE NOT INCLUDED IN THE BARGAINING UNIT.

4. THERE WAS FILED WITH THE BOARD A STATEMENT OF DESIRE (HEREINAFTER REFERRED TO AS THE PETITION) BEARING THE SIGNATURES OF 21 PERSONS PURPORTING TO BE EMPLOYEES OF THE RESPONDENT EXPRESSING OPPOSITION TO THE APPLICATION, 10 OF WHOM ARE CLAIMED IN MEMBERSHIP BY THE APPLICANT UNION. IF THE BOARD WERE TO GIVE WEIGHT TO THE PETITION THE APPLICANT WOULD HAVE UNQUALIFIED EVIDENCE OF MEMBERSHIP FOR LESS THAN THE 65 PER CENT REQUIRED FOR OUTRIGHT CERTIFICATION. THE BOARD ACCORDINGLY INQUIRED INTO THE ORIGINATION, PREPARATION AND CIRCULATION OF THE PETITION.

5. DEREK CARRUTHERS, WHO IS AN "OVER-THE-ROAD" DRIVER IN THE EMPLOY OF THE RESPONDENT, GAVE THE FOLLOWING TESTIMONY CONCERNING THE PETITION. WHEN HE FIRST BECAME AWARE OF THE APPLICANT UNION'S ORGANIZING CAMPAIGN AMONG THE EMPLOYEES OF THE RESPONDENT IN JANUARY OF THIS YEAR, HE PREPARED A PETITION IN OPPOSITION TO THE UNION WHICH HE CIRCULATED IN THE RESPONDENT'S PLANT DURING WORKING HOURS AND SECURED SIGNATURES THEREON. WHILE HE WAS CIRCULATING THE SAID DOCUMENT, ALEX ZILIO, THE PLANT MANAGER, STOPPED CARRUTHERS AND INQUIRED AS TO WHAT HE WAS DOING. WHEN CARRUTHERS ADVISED ZILIO THAT HE WAS CIRCULATING A PETITION AGAINST THE UNION, ZILIO GLANCED AT THE DOCUMENT, SAID NOTHING AND DEPARTED. CARRUTHERS WAS SUBSEQUENTLY ADVISED BY A FRIEND THAT THE DOCUMENT COULD NOT BE USED TO OPPOSE AN APPLICATION FOR CERTIFICATION BY THE APPLICANT UNION SINCE IT WAS PREPARED AND CIRCULATED PRIOR TO ANY APPLICATION BEING MADE.

6. WHEN THE APPLICANT FILED THE INSTANT APPLICATION FOR CERTIFICATION FOR A UNIT OF EMPLOYEES OF THE RESPONDENT ON FEBRUARY 24, 1972 AND NOTICE OF THE APPLICATION HAD BEEN POSTED, CARRUTHERS AGAIN

PREPARED AND CIRCULATED A PETITION WHICH EXPRESSED OPPOSITION TO THE APPLICATION. IT IS THIS DOCUMENT WHICH WAS FILED WITH THE BOARD. CARRUTHERS SECURED THE FIRST FIVE SIGNATURES THAT APPEAR ON THE PETITION IN THE PLANT DURING WORKING HOURS ON THE DAY SHIFT OF FEBRUARY 28, 1972. HE THEN GAVE THE DOCUMENT TO AN EMPLOYEE ON THE AFTERNOON SHIFT FOR THE PURPOSE OF SECURING MORE SIGNATURES ON THE PETITION AND INSTRUCTED THE EMPLOYEE TO GIVE THE PETITION TO YET ANOTHER EMPLOYEE FOR THE PURPOSE OF SECURING SIGNATURES OF EMPLOYEES ON THE NIGHT SHIFT. CARRUTHERS LEFT INSTRUCTIONS THAT THE SAID PERSON ON THE NIGHT SHIFT WAS TO PUT THE PETITION IN A SEALED ENVELOPE AND LEAVE IT IN THE OFFICE OF THE COMPANY FOR CARRUTHERS.

7. TWO DAYS LATER, ON THE MORNING OF MARCH 1, 1972, CARRUTHERS WENT TO THE COMPANY'S OFFICE AND ZILIO HANDED HIM A SEALED ENVELOPE ADDRESSED TO CARRUTHERS WHICH CONTAINED THE PETITION. FROM THE TIME THAT CARRUTHERS GAVE THE PETITION TO ANOTHER EMPLOYEE TO THE TIME WHEN IT CAME BACK INTO HIS POSSESSION, NINE ADDITIONAL SIGNATURES OF EMPLOYEES HAD BEEN INSCRIBED ON THE PETITION. AFTER SECURING ONE MORE SIGNATURE ON THE PETITION FROM AN EMPLOYEE IN THE PLANT, CARRUTHERS SECURED THE REMAINING SEVEN SIGNATURES THAT APPEAR ON IT FROM EMPLOYEES OF THE RESPONDENT WORKING AT TWO OTHER LOCATIONS, NAMELY THE STORAGE AREA AND THE WAREHOUSE. HE THEN MAILED THE PETITION TO THE BOARD.

8. CARRUTHERS TESTIFIED THAT HE OFTEN WENT INTO THE PLANT TO TALK TO OTHER EMPLOYEES AND THAT HE DID NOT NEED THE PERMISSION OF MANAGEMENT TO DO SO. HIS EVIDENCE IS THAT HE WAS AT THE PLANT IN THE COURSE OF HIS WORK WHEN HE SECURED THE SIGNATURES AT THAT LOCATION AND THAT THIS WAS ALSO THE CASE WHEN HE SECURED THE SIGNATURES AT THE OTHER TWO LOCATIONS. HIS TESTIMONY IS THAT THE FOREMEN AT BOTH THE PLANT AND STORAGE AREA WERE ON DUTY WHEN HE SECURED THE SIGNATURES AT THESE TWO LOCATIONS BUT THAT HE DID NOT SEE THEM AND WAS NOT AWARE AS TO WHETHER THEY SAW HIM SECURING SIGNATURES ON THE PETITION. ACCORDING TO HIS EVIDENCE, HOWEVER, HE HAD NO CONVERSATION WITH ANY MEMBER OF MANAGEMENT CONCERNING THE PETITION OR THE APPLICANT UNION, OTHER THAN HIS BRIEF ENCOUNTER WITH ZILIO WHEN HE WAS CIRCULATING THE FIRST DOCUMENT IN JANUARY.

9. ALL OF THE EMPLOYEES WHOSE SIGNATURES APPEAR ON THE PETITION WHO ARE CLAIMED IN MEMBERSHIP BY THE APPLICANT UNION ARE AMONG THOSE WHOSE SIGNATURES WERE NOT IDENTIFIED OR AMONG THOSE WHOSE SIGNATURES WERE SECURED BY CARRUTHERS AFTER HE WAS HANDED THE SEALED ENVELOPE BY ZILIO IN THE OFFICE OF THE RESPONDENT ON MARCH 1, 1972.

10. AS WAS STATED IN THE SENTRY DEPARTMENT STORES LIMITED CASE OLRB M.R. NOVEMBER 1968 P. 851, THE ONUS OF SATISFYING THE BOARD CONCERNING THE ORIGATION AND CIRCULATION OF A PETITION RESTS UPON THE EMPLOYEES WHO HAVE FILED THE STATEMENT OF OBJECTION. IN ADDITION, THE

ONUS OF MAKING ALL THE WITNESSES AVAILABLE WHO HAVE INFORMATION CONCERNING THE ORIGINATION AND CIRCULATION OF THE PETITION ALSO RESTS UPON THE OBJECTING EMPLOYEES. WE WOULD REFER SPECIFICALLY TO THE NOTICE TO EMPLOYEES OF APPLICATION FOR CERTIFICATION AND OF HEARING (FORM 5) WHICH READS IN PART:

8. ANY EMPLOYEE, OR GROUP OF EMPLOYEES, WHO HAS INFORMED THE BOARD IN WRITING OF HIS OR THEIR DESIRE IN ACCORDANCE WITH PARAGRAPH 5 AND 6 MAY ATTEND AND BE HEARD AT THE HEARING IN PERSON OR BY A REPRESENTATIVE. ANY EMPLOYEE OR REPRESENTATIVE WHO APPEARS AT THE HEARING WILL BE REQUIRED TO TESTIFY, OR PRODUCE A WITNESS OR WITNESSES WHO WILL BE ABLE TO TESTIFY FROM HIS OR THEIR PERSONAL KNOWLEDGE AND OBSERVATION, AS TO (A) THE CIRCUMSTANCES CONCERNING THE ORIGINATION OF THE MATERIAL FILED, AND (B) THE MANNER IN WHICH EACH OF THE SIGNATURES WAS OBTAINED.

11. CARRUTHERS WAS THE ONLY EMPLOYEE WHO TESTIFIED CONCERNING THE ORIGINATION AND THE CIRCULATION OF THE PETITION. SINCE THERE IS NO EVIDENCE AS TO THE MANNER IN WHICH NINE OF THE SIGNATURES WERE OBTAINED, WE ARE NOT PREPARED TO GIVE ANY WEIGHT TO THOSE SIGNATURES AS THE BOARD'S REQUIREMENTS AS SET OUT ABOVE HAVE NOT BEEN MET.

12. IN THE VERED & HARVEY COMPANY LIMITED KNOWN AS ALMONT HOTEL CASE OLRB M.R. NOVEMBER 1971 P. 736, THERE WAS A PETITION FILED IN OPPOSITION TO AN APPLICATION FOR CERTIFICATION BEARING SIX SIGNATURES OF PERSONS PURPORTING TO BE EMPLOYEES OF THE RESPONDENT COMPANY. THE EVIDENCE IN THAT CASE WAS THAT FIVE OF THE EMPLOYEES HAD SIGNED THE PETITION IN THE OFFICE OF THE LAWYER WHO HAD PREPARED IT. THE SIXTH PERSON WHOSE SIGNATURE APPEARED ON THE PETITION TESTIFIED THAT HE HAD FOUND THE DOCUMENT LYING ON A SERVING WINDOW AT THE BAR COUNTER OF THE RESPONDENT HOTEL AND SIGNED IT AT THAT LOCATION. THERE WAS A HIATUS IN THE EVIDENCE AS TO HOW THE DOCUMENT WAS TAKEN FROM THE LAWYER'S OFFICE TO THE HOTEL AND BACK AGAIN. IN THE ABOVE CIRCUMSTANCES, IN DETERMINING THE WEIGHT TO BE GIVEN TO THE PETITION, THE BOARD STATED AS FOLLOWS AT P. 739:

13. IN ATTEMPTING TO DECIDE WHAT WEIGHT TO BE GIVEN TO A POSITION WHICH, IN EFFECT, PURPORTS TO REVERSE OR REVOKE THE PREVIOUSLY EXPRESSED INTENT OF THE PETITIONERS TO JOIN THE UNION, AS EVIDENCED BY THE MEMBERSHIP CARDS SIGNED BY THEM AND FILED WITH THE BOARD, THE BOARD HAS FELT THAT IT OUGHT TO SATISFY ITSELF ON THE EVIDENCE THAT

A PETITION FILED IN OPPOSITION TO AN APPLICATION FOR CERTIFICATION IS FREE BOTH IN ITS ORIGINATION AND ITS CIRCULATION FROM ANY INFLUENCE OR INTERFERENCE ON THE PART OF MANAGEMENT. FOR THAT REASON, THE QUESTION OF THE CUSTODY OF THE PETITION THROUGHOUT THE PERIOD WHEN IT IS BEING SIGNED HAS ALWAYS BEEN REGARDED AS A KEY ONE IN THE BOARD'S DETERMINATIONS. THE LACK OF EVIDENCE RESPECTING CUSTODY IN THE CIRCUMSTANCES OF THE PRESENT CASE IS SUCH THAT WE CANNOT FIND THE PETITION CASTS SUCH DOUBT UPON THE EVIDENCE OF MEMBERSHIP AS TO REQUIRE THE CONFIRMATORY EVIDENCE OF A REPRESENTATION VOTE.

13. IN THE INSTANT CASE ALL OF THE SIGNATURES WHICH WERE IDENTIFIED WERE SECURED BY CARRUTHERS FROM EMPLOYEES AT THE LOCATION OF THEIR WORK DURING WORKING HOURS. IT IS CLEAR FROM CARRUTHERS' TESTIMONY THAT HE WAS NOT CONCERNED AS TO WHETHER OR NOT MANAGEMENT OF THE RESPONDENT WAS AWARE OF HIS ACTIVITIES. FURTHER, THE PETITION WAS OUT OF HIS CUSTODY FROM THE AFTERNOON OF MONDAY, FEBRUARY 28, 1972 UNTIL WEDNESDAY MORNING, MARCH 1, 1972, DURING WHICH TIME NINE UNIDENTIFIED SIGNATURES WERE SECURED ON THE PETITION. MOREOVER, BY PRE-ARRANGEMENT THE PETITION WAS LEFT IN THE OFFICE OF THE RESPONDENT, ALBEIT IN A SEALED ENVELOPE, AND THE ENVELOPE WAS HANDED TO CARRUTHERS BY THE PLANT MANAGER. CARRUTHERS THEREUPON SECURED SEVEN ADDITIONAL SIGNATURES ON THE PETITION.

14. HAVING REGARD TO ALL THE CIRCUMSTANCES SURROUNDING THE CIRCULATION OF THE PETITION AND IN PARTICULAR THE HIATUS IN THE EVIDENCE AS TO THE MANNER IN WHICH A SUBSTANTIAL NUMBER OF THE SIGNATURES WERE OBTAINED, THE BOARD IS NOT ABLE TO FIND THAT THE PETITION SO WEAKENS THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT AS TO CAUSE THE BOARD TO SEEK THE CONFIRMATORY EVIDENCE OF A REPRESENTATION VOTE.

15. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN SIXTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON MARCH 6, 1972, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 92(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

16. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

1691-71-R: INTERNATIONAL UNION OF DISTRICT 50, ALLIED AND TECHNICAL WORKERS OF THE UNITED STATES AND CANADA (APPLICANT) V. STAR STEEL LTD. (RESPONDENT).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS P. J. O'KEEFE AND J.E.C. ROBINSON, Q.C.

APPEARANCES AT THE HEARING: F. CHILDS FOR THE APPLICANT, G. D. McCULLOCH AND W. WRIGHT FOR THE RESPONDENT.

DECISION OF THE BOARD: MARCH 28, 1972.

1. THE NAME "STAR STEEL LIMITED" APPEARING IN THE STYLE OF CAUSE OF THIS APPLICATION AS THE NAME OF THE RESPONDENT IS AMENDED TO READ: "STAR STEEL LTD."

2. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(N) OF THE LABOUR RELATIONS ACT.

3. THE RESPONDENT FILED WITH THE BOARD A DOCUMENT DATED APRIL 28, 1971 TITLED "SHOP AGREEMENT" WHICH IT SUBMITS IS A COLLECTIVE AGREEMENT COVERING THE UNIT OF EMPLOYEES FOR WHICH THE APPLICANT IS SEEKING CERTIFICATION. THE DOCUMENT WHICH PURPORTS TO BE EFFECTIVE FROM MAY 3, 1971 TO APRIL 30, 1972 BEARS THE SIGNATURE OF THE PRESIDENT OF THE RESPONDENT UNDER THE HEADING "FOR COMPANY" AND THE SIGNATURE OF THREE EMPLOYEES UNDER THE HEADING "FOR EMPLOYEES".

4. WE ARE NOT SATISFIED ON THE BASIS OF THE EVIDENCE BEFORE US THAT THERE IS AN ORGANIZATION OF EMPLOYEES OF THE RESPONDENT FORMED FOR PURPOSES THAT INCLUDE THE REGULATION OF RELATIONS BETWEEN THE RESPONDENT AND ITS EMPLOYEES. THE BOARD ACCORDINGLY FINDS THAT THERE IS NO TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(N) OF THE ACT WHICH IS A PARTY TO THE DOCUMENT DATED APRIL 28, 1971. IT THEREFORE FOLLOWS THAT THE SAID DOCUMENT IS NOT A COLLECTIVE AGREEMENT AS DEFINED IN SECTION 1(1)(E) OF THE ACT.

5. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT MILTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

6. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN SIXTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON MARCH 13, 1972, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 92(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

7. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

1397-71-R: CANADIAN STEELWORKERS UNION OF CANADA (APPLICANT) v. ATLAS STEELS COMPANY, A DIVISION OF RIO ALGOM MINES LTD. (RESPONDENT) v. UNITED STEELWORKERS OF AMERICA (INTERVENER).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND J.E.C. ROBINSON, Q.C.

APPEARANCES AT THE HEARING: ALLAN GOODMAN, Q.C., PAUL WING AND M. E. RIEGLE FOR THE APPLICANT; D. CHURCHILL-SMITH, D. O. GRAY AND W. A. YULE FOR THE RESPONDENT; L. MACLEAN, D. M. STOREY AND L. SHARPE FOR THE INTERVENER.

DECISION OF J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBER E. BOYER:
MARCH 28, 1972.

1. THIS IS AN APPLICATION FOR CERTIFICATION WHEREIN THE APPLICANT SEEKS TO DISPLACE THE INTERVENER AS BARGAINING AGENT FOR THE OFFICE AND TECHNICAL EMPLOYEES OF THE RESPONDENT WHO ARE CURRENTLY REPRESENTED BY THE INTERVENER.
2. THIS MATTER CAME ON FOR HEARING TO AFFORD THE BOARD AN OPPORTUNITY TO INQUIRE INTO THE STATUS OF THE APPLICANT.
3. THE EVIDENCE IN THIS CASE ESTABLISHED THAT CANADIAN STEELWORKERS' UNION, ATLAS DIVISION IS THE BARGAINING AGENT FOR THE HOURLY RATED PLANT EMPLOYEES OF THE RESPONDENT.
4. FOLLOWING INQUIRIES FROM CERTAIN OFFICE OR SALARIED EMPLOYEES CONCERNING THE POSSIBILITY OF CANADIAN STEELWORKERS' UNION, ATLAS DIVISION REPRESENTING THEM, IT WAS DECIDED THAT A SEPARATE ORGANIZATION BE FORMED FOR THE SALARIED EMPLOYEES. FIVE MEMBERS OF THE EXECUTIVE OF THE CANADIAN STEELWORKERS' UNION, ATLAS DIVISION MET ON MARCH 12, 1971 AND DECIDED TO FORM A UNION TO BE KNOWN AS CANADIAN STEELWORKERS' UNION OF CANADA AND ONE OF THE FIVE WAS INSTRUCTED TO PREPARE A CONSTITUTION.
5. A CONSTITUTION WAS PREPARED AND PRESENTED TO A MEETING OF THE FIVE PERSONS ON APRIL 9, 1971. THIS CONSTITUTION APPEARS TO BE IN MUCH THE SAME FORM AS THE CONSTITUTION OF CANADIAN STEELWORKERS' UNION, ATLAS DIVISION. AFTER DISCUSSING THE CONSTITUTION THE FIVE PERSONS "ACCEPTED" THE CONSTITUTION AND THE FIVE PERSONS APPOINTED ONE ANOTHER TO THE OFFICES OF PRESIDENT, VICE-PRESIDENT, SECRETARY-TREASURER, AND TWO DIRECTORS OF CANADIAN STEELWORKERS UNION OF CANADA. FUNDS WERE TRANSFERRED TO THE NEW ORGANIZATION FROM THE CANADIAN STEELWORKERS' UNION, ATLAS DIVISION.
6. NONE OF THE FIVE PERSONS EVER BECAME A MEMBER OF THE CANADIAN STEELWORKERS UNION OF CANADA.

7. DURING THE LATTER PART OF 1971 MEMBERSHIP CARDS WERE SIGNED AND \$1.00 WAS PAID BY SOME OF THE SALARIED EMPLOYEES AND THIS APPLICATION FOR CERTIFICATION WAS MADE BY THE APPLICANT ON DECEMBER 20, 1971.
8. NO MEMBERSHIP MEETING WAS HELD PRIOR TO DECEMBER 20, 1971 AND THE PERSONS WHO SIGNED MEMBERSHIP CARDS NEVER ADOPTED THE CONSTITUTION OR RATIFIED ANY OF THE ACTS OF THE FIVE PERSONS WHO WERE APPOINTED OFFICERS OF THE APPLICANT.
9. THE APPLICANT'S CONSTITUTION READS IN PART AS FOLLOWS:

ARTICLE VI THE BOARD OF EXECUTIVES

SECTION 1: EXCEPT AS OTHERWISE IN THIS CONSTITUTION EXPRESSLY PROVIDED, THE AFFAIRS AND PROPERTY OF THE UNION SHALL BE MANAGED BY A BOARD OF EXECUTIVES WHICH SHALL BE COMPOSED OF NOT LESS THAN FIVE (5) MEMBERS OF THE UNION. THE MEMBERS OF THE BOARD SHALL BE ELECTED BY THE MEMBERS OF THE UNION IN THE MANNER HEREINAFTER PROVIDED.

ARTICLE VII GENERAL ELECTIONS AND VOTES OF MEMBERS

THE FIRST BOARD OF EXECUTIVES SHALL BE ELECTED BY THE MEMBERS AT THE FIRST GENERAL MEETING OF THE MEMBERS CALLED FOR THE PURPOSE OF ADOPTING THIS CONSTITUTION AND AFTER THE ADOPTION OF THE CONSTITUTION.

10. ON THE EVIDENCE BEFORE US WE FIND THAT THE FIVE PERSONS WHO APPOINTED THEMSELVES AS OFFICERS OF THE APPLICANT HAD NO AUTHORITY TO DO SO UNDER THE CONSTITUTION AND INDEED WERE NOT ENTITLED TO HOLD OFFICE IN THE APPLICANT SINCE THEY WERE NOT MEMBERS OF THE APPLICANT AS REQUIRED BY THE CONSTITUTION. WE FURTHER FIND THAT THE CONSTITUTION WAS NEVER ADOPTED, APPROVED OR RATIFIED BY THE PERSONS WHO SIGNED MEMBERSHIP CARDS IN THE APPLICANT. WE ACCORDINGLY FIND THAT THE FIVE PERSONS MERELY FORMED A "PAPER UNION" AND THAT THERE IS NO ORGANIZATION OF EMPLOYEES WHICH CAN BE CHARACTERIZED AS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(N) OF THE ACT.
11. WE FURTHER FIND THAT WHILE THE CONSTITUTION WAS PREPARED THE STEPS TAKEN TO FORM THE APPLICANT WERE SO DEFECTIVE THAT AT THE TIME THIS APPLICATION WAS MADE THE APPLICANT WAS NOT AN "ORGANIZATION OF EMPLOYEES" AND THAT THE APPLICANT HAD NO OFFICERS DULY ELECTED AS REQUIRED BY THE CONSTITUTION. SINCE THE ORGANIZATION OF EMPLOYEES NEVER CAME INTO EXISTENCE, THERE WAS NOTHING FOR THE RESPONDENT'S EMPLOYEES TO JOIN AND THE DOCUMENTARY EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLI-

CANT WAS THEREFORE NOT EVIDENCE OF MEMBERSHIP IN A TRADE UNION.

12. FOR THE ABOVE REASONS AND FOR THE REASONS SET OUT IN THE ALCAN UNIVERSAL HOMES DIVISION OF ALCAN DESIGN HOMES LIMITED CASE, OLRB MONTHLY REPORT, APRIL 1969, P. 55, WE FIND THAT THE APPLICANT IS NOT A VIABLE ENTITY AND IS NOT AN ORGANIZATION OF EMPLOYEES AND ACCORDINGLY IS NOT A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(N) OF THE ACT.

13. THE APPLICATION IS THEREFORE DISMISSED.

14. THE REGISTRAR WILL DESTROY THE BALLOTS CAST IN THE PRE-HEARING REPRESENTATION VOTE TAKEN IN THIS MATTER FOLLOWING THE EXPIRATION OF 30 DAYS FROM THE DATE OF THIS DECISION UNLESS A STATEMENT REQUESTING THAT THE BALLOTS SHOULD NOT BE DESTROYED IS RECEIVED BY THE BOARD FROM ONE OF THE PARTIES BEFORE THE EXPIRATION OF SUCH 30 DAY PERIOD.

DECISION OF BOARD MEMBER J.E.C. ROBINSON, Q.C.: MARCH 28, 1972.

I HAVE ONLY RECENTLY WRITTEN A DISSENT TO THE MAJORITY DECISION IN ECONOMICAL MUTUAL INSURANCE COMPANY, BOARD FILE NO. 1497-71-R DATED FEBRUARY 29, 1972.

THAT DISSENT DEALT WITH THE STATUS OF THE APPLICANT TRADE UNION IN THAT CASE AND IN THAT DISSENT I INDICATED THAT I FELT THE MAJORITY DECISION WAS AT VARIANCE WITH EARLIER DECISIONS OF THE BOARD REGARDING STATUS.

WHILE THERE ARE CERTAIN DISTINCTIONS BETWEEN THE PRESENT CASE AND THE ECONOMICAL MUTUAL INSURANCE COMPANY CASE, THERE ARE SUFFICIENT SIMILARITIES FOR ME TO INDICATE THAT I AM OF THE OPINION THAT THE MAJORITY DECISION IN THE INSTANT CASE RE-STATES THE EARLIER JURISPRUDENCE OF THE BOARD, BUT IS AT VARIANCE WITH THE ECONOMICAL MUTUAL INSURANCE COMPANY CASE.

148-70-M: GRACE MIEDEMA (APPLICANT) V. LONDON AND DISTRICT BUILDING SERVICE WORKERS' UNION, LOCAL 220, S.E.I.U. A.F. OF L., C.I.O., C.L.C. (RESPONDENT TRADE UNION) V. VICTORIA HOSPITAL BOARD OF TRUSTEES (RESPONDENT EMPLOYER).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS O. HODGES AND H. F. IRWIN.

APPEARANCES AT THE HEARING: GRACE MIEDEMA, WILLIAM R. HERRIDGE, Q.C. AND GERALD VANDEZANDE FOR THE RESPONDENT TRADE UNION; L. R. ALLEN AND W. J. WHITTAKER, Q.C. FOR THE RESPONDENT EMPLOYER.

DECISION OF VICE-CHAIRMAN RORY F. EGAN AND BOARD MEMBER H.F. IRWIN:
MARCH 30, 1972.

1. THE NAME "LONDON AND DISTRICT BUILDING SERVICE WORKERS' UNION, LOCAL 220, S.E.I.U.-A.F.L.-C.I.O.-C.L.C." APPEARING IN THE STYLE OF CAUSE OF THIS APPLICATION AS THE NAME OF THE RESPONDENT TRADE UNION IS AMENDED TO READ: "LONDON AND DISTRICT BUILDING SERVICE WORKERS' UNION, LOCAL 220, S.E.I.U., A.F. OF L., C.I.O., C.L.C.".

2. THE NAME "VICTORIA HOSPITAL BOARD OF TRUSTEES OF THE CITY OF LONDON" APPEARING IN THE STYLE OF CAUSE OF THIS APPLICATION AS THE NAME OF THE RESPONDENT EMPLOYER IS AMENDED TO READ: "VICTORIA HOSPITAL BOARD OF TRUSTEES".

3. THIS IS AN APPLICATION BY GRACE MIEDEMA UNDER SECTION 39 OF THE LABOUR RELATIONS ACT FOR AN ORDER BY THE BOARD THAT, BECAUSE OF HER RELIGIOUS CONVICTION OR BELIEF, THE PROVISIONS OF ARTICLE 15 OF A COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT TRADE UNION (HEREINAFTER CALLED THE UNION) AND THE RESPONDENT EMPLOYER (HEREINAFTER CALLED THE EMPLOYER), OPERATIVE FROM THE 29TH DAY OF NOVEMBER, 1968 TO THE 31ST DAY OF DECEMBER, 1970, DO NOT APPLY TO HER.

4. IT IS COMMON GROUND THAT THE ABOVE AGREEMENT EXPIRED, PURSUANT TO ITS TERMS IN THAT REGARD, ON THE 31ST DAY OF DECEMBER, 1970 AND THAT BETWEEN THAT DATE AND JULY 16, 1971, WHEN A NEW AGREEMENT BECAME EFFECTIVE, THERE WAS NO COLLECTIVE AGREEMENT IN OPERATION BETWEEN THE UNION AND THE EMPLOYER.

5. THE APPLICATION WAS MADE ON MARCH 18, 1971, THAT IS, DURING THE PERIOD WHEN NO COLLECTIVE AGREEMENT WAS IN FORCE.

6. THE UNION RAISED A PRELIMINARY OBJECTION IN WHICH IT SUBMITTED THAT THE APPLICATION WAS UNTIMELY HAVING REGARD TO THE PROVISIONS OF SECTION 39 SUBSECTION (2) OF THE ACT WHICH SETS OUT THE CIRCUMSTANCES UNDER WHICH THE RELIEF PROVIDED BY SECTION 39(1) BECOMES AVAILABLE TO AN APPLICANT. SECTION 39 OF THE ACT READS AS FOLLOWS:

39.(1) WHERE THE BOARD IS SATISFIED THAT AN
EMPLOYEE BECAUSE OF HIS RELIGIOUS CONVIC-
TION OR BELIEF,

(A) OBJECTS TO JOINING A TRADE UNION;
OR

(B) OBJECTS TO THE PAYING OF DUES OR
OTHER ASSESSMENTS TO A TRADE UNION,

THE BOARD MAY ORDER THAT THE PROVISIONS OF A COLLECTIVE AGREEMENT OF THE TYPE MENTIONED IN CLAUSE A OF SUBSECTION 1 OF SECTION 38 DO NOT APPLY TO SUCH EMPLOYEE AND THAT THE EMPLOYEE IS NOT REQUIRED TO JOIN THE TRADE UNION, TO BE OR CONTINUE TO BE A MEMBER OF THE TRADE UNION, OR TO PAY ANY DUES, FEES OR ASSESSMENTS TO THE TRADE UNION, PROVIDED THAT AMOUNTS EQUAL TO ANY INITIATION FEES, DUES OR OTHER ASSESSMENTS ARE PAID BY THE EMPLOYEE TO OR ARE REMITTED BY THE EMPLOYER TO A CHARITABLE ORGANIZATION MUTUALLY AGREED UPON BY THE EMPLOYEE AND THE TRADE UNION, BUT IF THE EMPLOYEE AND THE TRADE UNION FAIL TO SO AGREE THEN TO SUCH CHARITABLE ORGANIZATION REGISTERED AS A CHARITABLE ORGANIZATION IN CANADA UNDER PART I OF THE INCOME TAX ACT (CANADA) AS MAY BE DESIGNATED BY THE BOARD.

(2) SUBSECTION 1 APPLIES,

(A) SUBJECT TO CLAUSE B, TO EMPLOYEES IN THE EMPLOY OF AN EMPLOYER AT THE TIME A COLLECTIVE AGREEMENT CONTAINING A PROVISION OF THE KIND MENTIONED IN SUBSECTION 1 IS FIRST ENTERED INTO WITH THAT EMPLOYER AND ONLY DURING THE LIFE OF SUCH COLLECTIVE AGREEMENT; AND

(B) WHERE A COLLECTIVE AGREEMENT IN FORCE BEFORE THE 15TH DAY OF FEBRUARY, 1971 CONTAINS THE PROVISIONS MENTIONED IN SUBSECTION 1, TO EMPLOYEES IN THE EMPLOY OF THE EMPLOYER ON THE 15TH DAY OF FEBRUARY 1971 AND ONLY DURING THE LIFE OF SUCH COLLECTIVE AGREEMENT,

AND DOES NOT APPLY TO EMPLOYEES WHOSE EMPLOYMENT COMMENCES AFTER THE ENTERING INTO OF THE COLLECTIVE AGREEMENT WHEN CLAUSE A APPLIES, OR ON OR AFTER THE 15TH DAY OF FEBRUARY 1971, WHEN CLAUSE B APPLIES.

7. THE UNION'S SUBMISSION IS BASED UPON THE FOREGOING FACTS AND THE PROVISIONS OF SECTION 39(2)(B) WHICH INDICATES THAT SUBSECTION (1) APPLIED "ONLY DURING THE LIFE OF SUCH COLLECTIVE AGREEMENT". THE UNION ARGUES THAT SINCE THE APPLICATION WAS MADE DURING THE HIATUS

THAT OCCURRED BETWEEN THE EXPIRY OF ONE AGREEMENT AND THE COMMENCEMENT OF THE OPERATION OF THE NEW AGREEMENT, IT COULD NOT BE SAID TO HAVE BEEN BROUGHT DURING THE LIFE OF THE COLLECTIVE AGREEMENT AS THE STATUTE REQUIRES AND IS THEREFORE UNTIMELY AND OUGHT TO BE DISMISSED.

8. DURING THE COURSE OF ARGUMENT, REFERENCE WAS MADE TO THE PROVISIONS OF SECTION 70 OF THE LABOUR RELATIONS ACT AND SECTION 10 OF THE HOSPITAL LABOUR DISPUTES ARBITRATION ACT. SINCE THE EMPLOYER IS A HOSPITAL, SECTION 10 OF THE LATTER ACT, AS IS APPARENT FROM ITS LANGUAGE, MUST APPLY TO THE PRESENT SITUATION. SECTION 10 OF THE HOSPITAL LABOUR DISPUTES ARBITRATION ACT READS AS FOLLOWS:

10. NOTWITHSTANDING SUBSECTION 1 OF SECTION 59 OF THE LABOUR RELATIONS ACT, WHERE NOTICE HAS BEEN GIVEN UNDER SECTION 11 OR 40 OF THAT ACT BY OR TO A TRADE UNION THAT IS THE BARGAINING AGENT FOR A BARGAINING UNIT OF HOSPITAL EMPLOYEES TO WHICH THIS ACT APPLIES TO OR BY THE EMPLOYER OF SUCH EMPLOYEES AND NO COLLECTIVE AGREEMENT IS IN OPERATION, NO SUCH EMPLOYER SHALL, EXCEPT WITH THE CONSENT OF THE TRADE UNION, ALTER THE RATES OF WAGES OR ANY OTHER TERM OR CONDITION OF EMPLOYMENT OR ANY RIGHT, PRIVILEGE OR DUTY OF THE EMPLOYER, THE TRADE UNION OR THE EMPLOYEES, AND NO SUCH TRADE UNION SHALL, EXCEPT WITH THE CONSENT OF THE EMPLOYER, ALTER ANY TERM OR CONDITION OF EMPLOYMENT OR ANY RIGHT, PRIVILEGE OR DUTY OF THE EMPLOYER, THE TRADE UNION OR THE EMPLOYEES, UNTIL THE RIGHT OF THE TRADE UNION TO REPRESENT THE EMPLOYEES HAS BEEN TERMINATED.

9. THE APPLICANT ARGUED THAT THE APPLICATION WAS TIMELY BY REASON OF THE PROVISIONS OF THE FOREGOING SECTION 10 WHICH, IT URGED, EXTENDED IN EFFECT, THE LIFE OF THE COLLECTIVE AGREEMENT. THE UNION, ON THE OTHER HAND, ARGUED THAT SECTION 10 CANNOT EXTEND THE LIFE OF THE AGREEMENT SINCE A PREREQUISITE TO THE APPLICATION OF THE PROVISIONS OF THE SECTION IS THAT THERE BE NO COLLECTIVE AGREEMENT IN OPERATION. THE UNION'S ARGUMENT ON THIS POINT APPEARS TO BE A FORMIDABLE ONE ALTHOUGH WE DO NOT BELIEVE IT REASONABLY CONCLUDES THE MATTER.

10. IT WOULD APPEAR PLAIN FROM A READING OF SECTION 39 OF THE LABOUR RELATIONS ACT THAT IT WAS THE INTENT OF THE LEGISLATURE TO AFFORD THE PERSONS REFERRED TO IN SUBSECTION 39(2)(A) AND (B), AT LEAST ONE OPPORTUNITY TO OBTAIN RELIEF FROM THE COMPULSORY PROVISIONS OF A COLLECTIVE AGREEMENT WHICH OFFENDED THEIR RELIGIOUS BELIEFS AND CONVICTIONS. IN THE CIRCUMSTANCES OF THE PRESENT CASE, IF THE RIGHT

INTERPRETATION OF THE WORDS "DURING THE LIFE OF THE AGREEMENT" CONTENDED FOR BY THE UNION IS CORRECT, THE RESULT WOULD BE THAT PERSONS IN THE POSITION OF THE APPLICANT WOULD BE DENIED PERMANENTLY ANY OPPORTUNITY TO TAKE ADVANTAGE OF THE ESCAPE PROVISIONS OF SECTION 39. IN VIEW OF THE GENERAL PURPOSE OF THE SECTION TO GRANT RELIEF, IT IS NECESSARY TO CONSIDER WITH CARE WHETHER THE LEGISLATURE IN USING THE WORDS "DURING THE LIFE OF THE AGREEMENT" INTENDED TO DENY THE RELIEF FOR WHICH THE SECTION IS DESIGNED TO PERSONS CAUGHT IN THE POSITION OF THE APPLICANT.

11. IT IS TO BE NOTED THAT THE FINAL PARAGRAPH OF SECTION 39 SPECIFIED THE EMPLOYEES TO WHOM THE SECTION DOES NOT APPLY. AMONG THE EMPLOYEES TO WHOM THE SECTION DOES NOT APPLY ARE THOSE WHOSE EMPLOYMENT COMMENCES AFTER THE ENTERING INTO A COLLECTIVE AGREEMENT WHEN CLAUSE (A) APPLIES. THE APPLICANT IS NOT ONE OF THAT CLASS OF EMPLOYEES. THE OTHER CLASS OF EMPLOYEES SPECIFIED COMPRISES PERSONS WHOSE EMPLOYMENT COMMENCES ON OR AFTER THE 15TH DAY OF FEBRUARY, 1971. THE APPLICANT DOES NOT FALL WITHIN THAT EXCLUDED CLASS EITHER. THE APPLICANT WOULD THUS APPEAR TO HAVE FALLEN INTO SOME SORT OF LEGISLATIVE LIMBO. HAVING IN MIND THE REMEDIAL NATURE OF THE STATUTE, IT WOULD APPEAR THAT IT OUGHT TO BE INTERPRETED SO AS TO AFFORD RELIEF TO PERSONS IN THE APPLICANT'S POSITION UNLESS A CLEAR INTENT TO DENY THEM THE BENEFIT OF THE ENACTMENT IS READILY DISCERNIBLE.

12. IN ATTEMPTING TO ARRIVE AT A DECISION AS TO THE MEANING TO BE ATTRIBUTED TO THE PHRASE IN QUESTION, WE THINK IT IS PROPER TO ASSUME THAT THE LEGISLATURE HAD IN MIND, AT THE TIME OF THE ENACTMENT OF SECTION 39, THE PROVISIONS OF SECTION 70 OF THE LABOUR RELATIONS ACT AND SECTION 10 OF THE HOSPITAL LABOUR DISPUTES ARBITRATION ACT. IT IS ALSO TO BE PRESUMED THAT THE LEGISLATURE INTENDED SECTION 39 OF THE LABOUR RELATIONS ACT TO BE CONSISTENT WITH THE TERMS OF THOSE OTHER ENACTMENTS.

13. IT HAS BEEN SAID WITH RESPECT TO AN ENQUIRY INTO THE MEANING OF A STATUTE THAT:

"A STATUTE IS THE WILL OF THE LEGISLATURE, AND THE FUNDAMENTAL RULE OF INTERPRETATION, TO WHICH ALL OTHERS ARE SUBORDINATE, IS THAT A STATUTE IS TO BE EXPOUNDED 'ACCORDING TO THE INTENT OF THEM THAT MADE IT'.... THE OBJECT OF ALL INTERPRETATION OF A STATUTE IS TO DETERMINE WHAT INTENTION IS CONVEYED EITHER EXPRESSLY OR IMPLIEDLY, BY THE LANGUAGE USED, SO FAR AS IS NECESSARY FOR DETERMINING WHETHER THE PARTICULAR CASE OR STATED OF FACT PRESENTED TO THE INTERPRETER

FALLS WITHIN IT... (MAXWELL OF INTERPRETATION OF STATUTES 9TH ED. PP.1-2)".

14. IN ADDITION, SECTION 10 OF THE INTERPRETATION ACT, R.S.O. 1970, c. 225 STATES:

"EVERY ACT SHALL BE DEEMED TO BE REMEDIAL, WHETHER ITS IMMEDIATE PURPORT IS TO DIRECT THE DOING OF ANYTHING THAT THE LEGISLATURE DEEMS TO BE FOR THE PUBLIC GOOD OR TO PREVENT OR PUNISH THE DOING OF ANY THING THAT IT DEEMS TO BE CONTRARY TO THE PUBLIC GOOD, AND SHALL ACCORDINGLY RECEIVE SUCH FAIR, LARGE AND LIBERAL CONSTRUCTION AND INTERPRETATION AS WILL BEST ENSURE THE ATTAINMENT OF THE OBJECT OF THE ACT ACCORDING TO ITS TRUE INTENT, MEANING AND SPIRIT."

15. WE PROPOSE TO EXAMINE THE PROVISIONS OF SECTION 39 OF THE LABOUR RELATIONS ACT IN THE LIGHT OF THE FOREGOING PRINCIPLES.

16. THERE SEEMS LITTLE DOUBT THAT SECTION 10 OF THE HOSPITAL LABOUR DISPUTES ARBITRATION ACT PROVIDES THAT THE OBLIGATIONS WITH RESPECT INTER ALIA TO UNION SECURITY WHICH HAD THEIR ORIGINS IN A DEFUNCT COLLECTIVE AGREEMENT ARE TO BE PRESERVED AS CONTINUING OBLIGATIONS UNDER THE SECTION UNTIL THE HAPPENING OF THE EVENTS SET OUT IN SUCH SECTION. THIS WOULD APPEAR TO BE SO SINCE THE SECTION PROVIDES THAT THERE SHALL BE NO ALTERATION IN WAGES, OTHER TERMS OR CONDITIONS OF EMPLOYMENT OR ANY RIGHT, PRIVILEGE OR DUTY OF THE EMPLOYER, THE TRADE UNION OR THE EMPLOYEES. THERE SEEMS TO BE LITTLE DOUBT THEREFORE THAT SUCH MATTERS WHICH, AS NOTED, ARE CREATED BY THE TERMS OF A COLLECTIVE AGREEMENT, ARE PRESERVED IN FORCE BY SECTION 10 OF THE HOSPITAL LABOUR DISPUTES ARBITRATION ACT WHEN AN AGREEMENT CEASES TO OPERATE. THUS, IN THE PRESENT CASE, THE APPLICANT, BY VIRTUE OF SECTION 10 OF THE HOSPITAL LABOUR DISPUTES ARBITRATION ACT, REMAINS DURING THE HIATUS REFERRED TO ABOVE, BOUND BY THE OBLIGATIONS CREATED BY THE COLLECTIVE AGREEMENT WITH RESPECT TO UNION SECURITY AND INDEED, IF NO NEW AGREEMENT MATERIALIZED, WOULD REMAIN BOUND UNTIL SUCH TIME AS THE UNION CEASED TO REPRESENT THE EMPLOYEES.

17. IN VIEW OF THE FACT THAT THE OBLIGATIONS WITH RESPECT TO UNION SECURITY WHICH ARE DERIVED FROM THE COLLECTIVE AGREEMENT CONTINUE BEYOND THE EXPIRY DATE OF THE COLLECTIVE AGREEMENT, AS INDICATED ABOVE, IT WOULD SEEM ONLY REASONABLE TO ASSUME THAT THE LEGISLATURE, BEING AWARE OF ITS OWN ENACTMENT OF SECTION 10 OF THE HOSPITAL LABOUR DISPUTES ARBITRATION ACT, INTENDED THAT THE REMEDIAL PROVISIONS OF SECTION 39 SHOULD RUN CONCURRENTLY WITH THE CONTINUING

UNION SECURITY OBLIGATIONS AGAINST WHICH THE LEGISLATURE, INTENDED TO GRANT RELIEF IN ENACTING SECTION 39 OF THE LABOUR RELATIONS ACT. IT IS APPARENT, THEREFORE, THAT THE LEGISLATURE, WITH THAT IN MIND, EMPLOYED THE TERM "DURING THE LIFE OF SUCH COLLECTIVE AGREEMENT" TO INCLUDE THE PERIOD OF TIME DURING WHICH THE CONDITIONS BROUGHT ABOUT BY THE TERMS OF THE AGREEMENT WERE EXTENDED SO THAT THE RELIEF MIGHT BE AVAILABLE FOR AS LONG AS THE OBLIGATION ARISING OUT OF THE FORMER COLLECTIVE AGREEMENT PERSISTED. IN OTHER WORDS, THE PHRASE "DURING THE LIFE OF THE AGREEMENT" IN THE PARTICULAR CONTEXT WITH WHICH WE ARE HERE CONCERNED MUST BE INTERPRETED TO MEAN (IN ORDER TO PRESERVE CONSISTENCY THROUGHOUT THE LEGISLATION) "DURING THE DURATION OF THE RESTRICTIONS CREATED BY A COLLECTIVE AGREEMENT". SUCH AN INTERPRETATION IS IN KEEPING WITH AND CARRIES FORWARD THE GENERAL INTENT AND PURPOSE OF SECTION 39 OF THE LABOUR RELATIONS ACT AND DOES NO VIOLENCE TO THE PROVISIONS OF SECTIONS 10 OF THE HOSPITAL LABOUR DISPUTES ARBITRATION ACT. THIS IS SO, SINCE SUCH DOES NOT INVOLVE A FINDING THAT SECTION 10 PROLONGS THE LIFE OF THE COLLECTIVE AGREEMENT BUT RATHER MERELY KEEPS IN BEING CERTAIN OBLIGATIONS WHOSE SOURCE IS TO BE FOUND IN THE TERMS OF AN EXPIRED COLLECTIVE AGREEMENT.

18. IN LIGHT OF THE FOREGOING AND HAVING REGARD TO ALL OF THE EVIDENCE, THE BOARD IS SATISFIED THAT THE APPLICANT IS AN EMPLOYEE OF THE RESPONDENT EMPLOYER WHO, BECAUSE OF HER RELIGIOUS CONVICTION OR BELIEFS, OBJECTS TO JOINING THE RESPONDENT TRADE UNION AND OBJECTS TO THE PAYING OF UNION DUES OR OTHER ASSESSMENTS TO THE RESPONDENT TRADE UNION.

19. THE BOARD THEREFORE ORDERS AND DIRECTS THAT THE PROVISIONS OF THE COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT EMPLOYER AND THE RESPONDENT UNION WHICH ARE OF THE TYPE MENTIONED IN SECTION 38(1)(A) OF THE ACT DO NOT APPLY TO THE APPLICANT AND ACCORDINGLY THE APPLICANT IS NOT REQUIRED TO JOIN THE RESPONDENT UNION, TO BE OR TO CONTINUE TO BE A MEMBER OF THE RESPONDENT UNION OR TO PAY ANY DUES, FEES OR OTHER ASSESSMENTS TO THE RESPONDENT UNION PROVIDED THAT AMOUNTS EQUAL TO ANY INITIATION FEES, DUES OR OTHER ASSESSMENTS ARE PAID BY THE APPLICANT TO OR ARE REMITTED BY THE RESPONDENT EMPLOYER TO A CHARITABLE ORGANIZATION MUTUALLY AGREED UPON BY THE APPLICANT AND THE RESPONDENT TRADE UNION.

20. HOWEVER, IF THE APPLICANT AND THE RESPONDENT TRADE UNION FAIL TO AGREE ON SUCH CHARITABLE ORGANIZATION, THE BOARD, UPON THE REQUEST OF EITHER THE APPLICANT OR THE RESPONDENT UNION, WILL DESIGNATE PURSUANT TO THE PROVISIONS OF SECTION 39(1) OF THE ACT A CHARITABLE ORGANIZATION REGISTERED AS SUCH IN CANADA UNDER PART I OF THE INCOME TAX ACT (CANADA).

DECISION OF BOARD MEMBER OLIVER HODGES: MARCH 30, 1972.

1. I CONCUR WITH THE REASONS AND FINDING OF THE MAJORITY IN THE MATTER OF TIMELINESS.
2. I CONCUR WITH THE MAJORITY IN GRANTING THE EXEMPTION.
3. THE APPLICANT MRS. GRACE MIEDEMA WAS BORN IN THE NETHERLANDS WHERE SHE ATTENDED THE CHRISTIAN SCHOOL THROUGH GRADE 8. IN 1955 SHE CAME TO CANADA WITH HER HUSBAND. A MEMBER OF THE FIRST CHRISTIAN REFORM CHURCH IN LONDON, SHE ATTENDS EVERY SUNDAY AT 7:00 P.M., AND ALSO AT 10:00 A.M. WHEN NOT WORKING. SHE BEGAN WORK AT VICTORIA HOSPITAL IN 1962. SHE WAS TOLD SHE HAD TO JOIN THE UNION, BUT WHEN ASKED TO DO SO AT WORK SHE SAID 'NO', AND REFUSED TO PAY DUES UNTIL FORCED TO. THIS OCCURRED IN THE CAFETERIA WHEN MRS. PAGE CAME TO HER AND SAID "GRACE, YOU HAVE TO SIGN THIS CARD, BECAUSE NOW YOU HAVE TO PAY FOR UNION". THE WITNESS TESTIFIED, "I SIGNED TWO CARDS, BUT LATER I LEARNED I COULD HAVE SIGNED ONLY ONE, FOR DUES. LATER, I FOUND I WAS A MEMBER, TOO. I WAS TOLD IF I DIDN'T SIGN FOR DUES I COULDN'T WORK. I SIGNED BECAUSE I DIDN'T KNOW; SHE CAME UNEXPECTED TO ME, I BECAME NERVOUS, ALL WERE LOOKING AT ME. I SHOULDN'T HAVE SIGNED BUT I DID. I COMMITTED A SIN. THE UNION HAS NOT BASED CONSTITUTION ON THE BIBLE. I DIDN'T READ THE CONSTITUTION, BUT I KNOW ABOUT ACTIONS AND I TALKED TO LOTS OF WORKERS. I KNEW IT WAS A NEUTRAL UNION. THERE WAS NO C.L.A.C. WHEN I SIGNED. A NEUTRAL UNION IS NOT BASED ON THE BIBLE. I READ CONSTITUTION AND BY-LAWS LATER. I GOT THE CONSTITUTION IN THE MAIL SINCE CARDS. IT WAS IN MAILBOX LIKE MY MEMBERSHIP CARD. WHEN I READ CONSTITUTION, I SAW THAT EVERYBODY COULD JOIN, EVERYBODY CAN GO IN THERE, EVEN COMMUNISTS CAN". ASKED BY HER COUNSEL, "WHAT IS BAD ABOUT NEUTRAL UNIONS," THE WITNESS REPLIED, "THEY DON'T ACT ACCORDING TO WHAT BIBLE TELLS THEM TO DO. I KNOW BECAUSE WE WERE CALLED OUT ON STRIKE, AND I COULDN'T DO IT. THAT WAS ABOUT LUNCH TIME. EVERYBODY WENT OUT AND DIDN'T COME BACK UNTIL NEXT MORNING. THIS OCCURRED IN JANUARY - COULD HAVE BEEN LAST YEAR." ASKED BY COUNSEL "WHAT'S WRONG WITH A STRIKE?", THE WITNESS TESTIFIED "STRIKES ARE AGAINST GOD'S LAW" AND QUOTED JAMES 4, VERSE 1, 2, AND 3 AS THE BIBLICAL REFERENCE FOR GOD'S LAW, AS FOLLOWS:

VERSE 1. FROM WHENCE CAME WARS AND FIGHTINGS
AMONG YOU? CAME THEY NOT HENCE,
EVEN OF YOUR LUSTS THAT WAR IN YOUR
MEMBERS?

VERSE 2. YE LUST, AND HAVE NOT: YE KILL, AND
DESIRE TO HAVE, AND CANNOT OBTAIN:
YE FIGHT AND WAR, YET YE HAVE NOT,
BECAUSE YE ASK NOT.

VERSE 3. YE ASK, AND RECEIVE NOT, BECAUSE YE
ASK AMISS, THAT YE MAY CONSUME IT UPON
YOUR LUSTS.

THE WITNESS DID NOT JOIN THE STRIKE. SHE COULDN'T DO IT BECAUSE "I HAVE GOD'S COMMANDMENTS; IT IS AGAINST GOD'S COMMANDMENTS". OTHER OBJECTIONS BY THE WITNESS WERE THAT THE UNION WAS "TOO MUCH REALISTIC AND NEVER SATISFIED". THE WITNESS AGAIN OFFERED A BIBLICAL QUOTE IN SUPPORT OF HER BELIEF, FROM HEBREWS 13, VERSES 1 TO 5:

VERSE 1. LET BROTHERLY LOVE CONTINUE.

VERSE 2. BE NOT FORGETFUL TO ENTERTAIN STRANGERS; FOR THEREBY SOME HAVE ENTERTAINED ANGELS UNAWARES.

VERSE 3. REMEMBER THEM THAT ARE IN BONDS, AS BOUND WITH THEM; AND THEM WHICH SUFFER ADVERSITY, AS BEING YOURSELVES ALSO IN THE BODY.

VERSE 4. MARRIAGE IS HONOURABLE IN ALL, AND THE BED UNDEFILED; BUT WHOREMONGERS AND ADULTERERS GOD WILL JUDGE.

VERSE 5. LET YOUR CONVERSATION BE WITHOUT COVETOUSNESS; AND BE CONTENT WITH SUCH THINGS AS YE HAVE: FOR HE HATH SAID, I WILL NEVER LEAVE THEE, NOR FORSAKE THEE.

THE WITNESS UNDERSTOOD THIS TO MEAN 'YOUR LIVES FREE FROM LOVE OF MONEY AND TO BE SATISFIED WITH WHAT YOU HAVE'.

ASKED BY COUNSEL WHETHER THIS DIDN'T LEAVE IT OPEN TO EMPLOYERS TO PAY PRETTY POOR WAGES, THE WITNESS REPLIED "IF NOT PAID ENOUGH, I WOULD GO TO THE EMPLOYER AND ASK FOR IT".

4. THE WITNESS IDENTIFIED TWO CARDS SENT TO HER BY THE UNION, EXHIBIT 2 FOR THE YEAR 1970 AND EXHIBIT 3 FOR THE YEAR 1971. THESE CARDS ARE OF A TYPE TO BE CARRIED ON ONE'S PERSON, IN A WALLET FOR EXAMPLE, ESTABLISHING THAT THE BEARER IS A MEMBER OF LOCAL 220 S.E.I.U. AND AN EMPLOYEE OF VICTORIA HOSPITAL. SHE TESTIFIED THESE DID NOT BEAR HER SIGNATURE IN THE PLACE PROVIDED BECAUSE "I COULDN'T SIGN THEM - MY CONSCIENCE WAS BOTHERING ME. I HAD SIGNED THE OTHER TWO". THE WITNESS ALSO OBJECTED TO A LETTER OF 26TH FEBRUARY, 1971, EXHIBIT 4, FROM THE UNION, ADDRESSING ITSELF TO "DEAR BROTHER OR SISTER". SHE TESTIFIED ONLY BROTHERS AND SISTERS IN CHRIST JESUS COULD IDENTIFY WITH HER; SHE COULDN'T CALL ANY ONE BUT A CHURCH MEMBER BROTHER OR SISTER IN UNION WITH CHRIST JESUS, SAYING "I DON'T ONLY MENTION MY OWN CHURCH". ASKED IF SHE INCLUDED THE UNITED CHURCH, THE REPLY WAS "IF THEY BELIEVE, YES". THE LETTER SAYS IN PART:

"WE ALL REALIZE HOSPITAL WORKERS CANNOT BY LAW GO ON STRIKE BUT SURELY THERE MUST BE SOME ACTION WE CAN TAKE TO INFORM THE PUBLIC OF THE TOTALLY UNACCEPTABLE WAGES AND WORKING CONDITIONS UNDER WHICH YOU AS A HOSPITAL WORKER MUST, BY LAW, SUFFER".

THE WITNESS TESTIFIED "THAT GOES AGAINST THE GOVERNMENT. WE HAVE TO OBEY THE GOVERNMENT BECAUSE IT IS PLACED THERE BY GOD. WE CAN ONLY TELL THE GOVERNMENT WHAT IS AGAINST THE BIBLE, BUT WE CAN'T GO AGAINST THE LAW IF IT SAYS WE CAN'T STRIKE". SHE WAS NOT MATERIALISTIC. THE BIBLE SAYS THE LOVE OF MONEY IS THE SOURCE OF EVIL DOINGS, AND "I CAN SEE THAT IN THE UNIONS".

5. THE WITNESS CAME TO MAKE HER APPLICATION BECAUSE OF INFORMATION IN THE CHURCH BULLETIN AND CALVINIST CONTACT, A WEEKLY MAGAZINE "WE ALL READ". IT WAS HERE SHE LEARNED ABOUT BILL 167 AND THAT AS A RESULT OF IT SHE COULD WITHDRAW FROM THE UNION," SO I THOUGHT THIS IS WHAT GOD WANTS ME TO DO, BECAUSE MY CONSCIENCE WAS BOTHERING ME. I COULDN'T GET OUT OF UNION EARLIER; HOW COULD I?" "AFTER READING ABOUT IT I MET MR. BLACK, THE PRESIDENT OF THE C.L.A.C., IN CHURCH AND HE SAID HE WOULD INFORM MR. VANDERLUND, WHO TOLD MR. VANDERZANDE. I THINK MR. VANDERLUND IS IN THE C.L.A.C. HE SENT ME THE LETTER (EXHIBIT 5) TO SEND TO THE HOSPITAL". THE WITNESS SIGNED THE LETTER REGISTERED IT HERSELF AND MAILED IT. THE REGISTRATION RECEIPT WAS FILED AS EXHIBIT 6. THE LETTER SENT TO THE WITNESS BY THE HOSPITAL IN REPLY WAS FILED AS EXHIBIT 7. THE WITNESS CONTINUED "I THINK I CAME IN CONTACT WITH MR. VANDERZANDE - I GOT A LETTER FROM HIM - I WAS THERE WHEN STEL WAS HEARD". THE WITNESS CONCLUDED HER EVIDENCE IN CHIEF BY SAYING "I WOULD LIKE TO BE A UNION MEMBER AND A MEMBER OF THE CHRISTIAN CHURCH - AND I CAN'T. I DON'T FEEL RIGHT. I WOULD LIKE TO GIVE IT TO CHRISTIAN CHARITY, BUT IF NOT, TO THE ONTARIO HEART FOUNDATION."

6. CROSS-EXAMINED, THE WITNESS SAID THAT IT WAS HER SIGNATURE ON A UNION APPLICATION FOR MEMBERSHIP CARD (EXHIBIT 8) DATED MAY 14TH, 1963. SHE WAS HIRED BY THE HOSPITAL IN NOVEMBER 1962. THE COLLECTIVE AGREEMENT IN EFFECT FROM AUGUST 1962 TO DECEMBER 1ST, 1964, WAS ENTERED AS EXHIBIT 13. THE UNION SECURITY PROVISION IN THAT AGREEMENT IS CLAUSE 44.

44. "THE EMPLOYER WILL DEDUCT UNION DUES MONTHLY FOR THE TERM OF THIS AGREEMENT, FROM THOSE EMPLOYEES WHO VOLUNTARILY SIGN THE NECESSARY AUTHORIZATION".

THE AUTHORIZATION FOR DEDUCTION THAT EMPLOYEES WERE PRESENTED WITH CONTAINED THE FOLLOWING PARAGRAPH:

THIS AUTHORIZATION SHALL BECOME EFFECTIVE AT THE FIRST REGULAR DEDUCTION DATE AFTER THE DATE HEREOF, AND SHALL REMAIN IN EFFECT FOR THE DURATION OF MY EMPLOYMENT COVERED BY A COLLECTIVE AGREEMENT BETWEEN THE UNION AND MY EMPLOYER UNLESS CANCELLED DURING THE TWO-MONTH PERIOD NEXT PRECEDING THE ANNIVERSARY DATE OF THE AGREEMENT.

SIGNATURE

WITNESS

THE WITNESS DIDN'T KNOW WHEN SHE SIGNED AND COULDN'T REMEMBER GETTING THE YELLOW BOOK (COLLECTIVE AGREEMENT - EXHIBIT 13). SHE RECALLED SIGNING TWO SORTS OF CARDS; ONE AN APPLICATION (EXHIBIT 8) FOR MEMBERSHIP AND ONE AN AUTHORIZATION (EXHIBIT 9) FOR CHECK-OFF. HER TESTIMONY IS "I DIDN'T WITHDRAW BEFORE BECAUSE I DIDN'T KNOW". THE WITNESS IDENTIFIED A LETTER DATED JUNE 4TH, 1964, TO THE UNION FROM HERSELF, EXHIBIT 10, REQUESTING THAT HER MEMBERSHIP BE TERMINATED. SHE GAVE "PERSONAL AND RELIGIOUS" AS REASONS FOR RESIGNING. EXHIBIT 16, A BOOKKEEPING SYSTEM CARD ENTERED BY THE RESPONDENT UNION SHOWS DUES ENTRIES FOR THE PERIOD JUNE 1963 TO MAY 1964 INCLUSIVE, AND THE WORD "REVOKED" PENCILLED IN THE JUNE 1964 SPACE FOR ENTRY. THE REQUEST FOR TERMINATION MADE ON JUNE 4TH, 1964, THEREFORE WAS ACCEPTED BY THE UNION, IN ADVANCE OF THE CONTRACTUAL CANCELLATION PERIOD BY SOME FIVE MONTHS. EXHIBIT 17, ANOTHER BOOKKEEPING SYSTEM CARD ENTERED BY THE RESPONDENT UNION SHOWS DUES ENTRIES FROM MAY 1967 TO MARCH 1971 INCLUSIVE. EXHIBIT 11 ENTERED BY THE RESPONDENT UNION IS A SECOND APPLICATION FOR MEMBERSHIP CARD DATED 18 APRIL, SIGNED BY THE APPLICANT. INFORMATION ON THIS CARD IS "JOINED MAY 1967 - RE-ADMITTED 18 APRIL". EXHIBIT 12 IS AN AUTHORIZATION FOR DUES CHECK-OFF SIGNED BY THE WITNESS AND DATED APRIL 18TH, 1967. THIS AUTHORIZATION IS "FOR THE DURATION OF MY EMPLOYMENT", WITH NO CANCELLATION PERIOD PROVIDED. THE WITNESS AGREED THAT MONEY WAS PAID TO THE UNION SUBSEQUENT TO HER 1964 RESIGNATION, BY CHECK-OFF. THE WITNESS COULDN'T REMEMBER SIGNING EXHIBIT 11, BUT AGREED THAT IT WAS HER SIGNATURE ON THE WHITE CARD. THE WITNESS SAID SHE NEVER PAID DUES BEFORE 1967 AND THAT NO MONEY WAS DEDUCTED FROM HER PAY. EXHIBIT 15, THE COLLECTIVE AGREEMENT SIGNED JUNE 5TH, 1967, AND DATED TO EXPIRE OCTOBER 12TH, 1968, IS THE FIRST AGREEMENT REQUIRING "ALL PRESENT AND FUTURE" EMPLOYEES TO "SIGN AN AUTHORIZATION CARD FOR DUES CHECK-OFF" IN THE FORM OF EXHIBIT 12. ASKED WHY SHE SIGNED IN 1963, THE WITNESS SAID "I CAN'T REMEMBER JOINING IN 1963".

7. RE-EXAMINED, THE WITNESS WAS SHOWN EXHIBIT 9, THE 1963 DUES DEDUCTION AUTHORIZATION FORM, A PINK CARD. SHE TESTIFIED "IT'S MY SIGNATURE. I DON'T KNOW WHO WROTE IT". SHOWN EXHIBIT 12, THE SECOND

DUES DEDUCTION AUTHORIZATION FORM, A BUFF CARD, THE WITNESS SAID "IT'S MY WRITING AT THE TOP AND THE SIGNATURE". SHOWN EXHIBIT 11, THE SECOND APPLICATION FOR MEMBERSHIP CARD, THE WITNESS SAID "MY WRITING ON THE FRONT". SHOWN EXHIBIT 10, HER 1964 LETTER OF RESIGNATION, WITH THE DATE SCRATCHED OUT AND RE-WRITTEN, SHE SAID "MINE" WHEN ASKED WHOSE WRITING IT WAS.

8. THE APPLICANT MIEDEMA TESTIFIED THAT HER VOLUNTARY ORIGINAL SIGNING PRECEDED THE C.L.A.C. "THERE WAS NO C.L.A.C. WHEN I SIGNED". HER LETTER OF JUNE 4TH, 1964, RESIGNING FROM THE UNION WAS ACCEPTED BY THE UNION. THE LOCAL RESPECTED THE "PERSONAL AND RELIGIOUS" REASONS OF THE APPLICANT. CONSIDERING ALL OF THE EVIDENCE, AND IN THE PARTICULAR CIRCUMSTANCES OF THIS CASE, I FIND GRACE MIEDEMA TO HAVE A RELIGIOUS CONVICTION OR BELIEF THAT ENTITLES HER TO EXEMPTION FROM UNION MEMBERSHIP AND DUES DEDUCTIONS UNDER THE PROVISIONS OF S.39.

9. WITH RESPECT TO MY CONCURRING DECISION IN THE MATTER OF TIMELINESS, I NOTE THAT THE LANGUAGE "DURING THE LIFE OF SUCH COLLECTIVE AGREEMENT" APPEARING IN S.39(2) (A) AND (B) OCCURS NOWHERE ELSE IN THE ACT. I UNDERSTAND THESE WORDS NOT TO HAVE, IN THE CIRCUMSTANCES OF THIS CASE, A LIKE MEANING TO "CONTINUES TO OPERATE" WHEN REFERRING TO THE TERM OF A COLLECTIVE AGREEMENT AS USED ELSEWHERE IN THE ACT, NOR TO HAVE A MEANING OPPOSITE TO "NO COLLECTIVE AGREEMENT IS IN OPERATION", AS IT APPEARS IN S.10 OF THE HOSPITAL DISPUTES ARBITRATION ACT AND IN S.70 OF THE LABOUR RELATIONS ACT.

CASE LISTINGS MARCH 1972

	PAGE
1. CERTIFICATION	
(A) BARGAINING AGENTS CERTIFIED	54
(B) APPLICATIONS DISMISSED	66
(C) APPLICATIONS WITHDRAWN	72
2. APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS	73
3. APPLICATION FOR DECLARATION OF SUCCESSOR STATUS	73
4. APPLICATIONS FOR CONSENT TO PROSECUTE	73
5. COMPLAINTS UNDER SECTION 79 (FORMERLY S. 65) (UNFAIR LABOUR PRACTICE)	74
6. APPLICATIONS UNDER SECTION 39 (FORMERLY S. 35 (A))	75
7. APPLICATIONS FOR CONSENT TO EARLY TERMINATION OF COLLECTIVE AGREEMENT	76
8. APPLICATION UNDER SECTION 55 (FORMERLY S. 47A)	76
9. JURISDICTIONAL DISPUTE	76
10. APPLICATIONS FOR DETERMINATION UNDER SECTION 95(2) (FORMERLY S. 79(2))	76
11. REFERENCES TO BOARD PURSUANT TO SECTION 96 (FORMERLY S. 79A)	77
12. APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION	77

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

DURING MARCH 1972

BARGAINING AGENTS CERTIFIED DURING MARCH

NO VOTE CONDUCTED

595-71-R: THE CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. THE OTTAWA BOARD OF EDUCATION (RESPONDENT) v. NATIONAL ASSOCIATION OF BROADCAST EMPLOYEES AND TECHNICIANS AFL-CIO-CLC (INTERVENER) v. GROUP OF EMPLOYEES (OBJECTORS).

UNIT #1: "ALL OFFICE, CLERICAL AND TECHNICAL EMPLOYEES OF THE RESPONDENT AT OTTAWA, SAVE AND EXCEPT DIRECTOR OF EDUCATION AND SECRETARY OF THE BOARD, EXECUTIVE ASSISTANT TO THE DIRECTOR OF EDUCATION, ASSISTANT DIRECTORS OF EDUCATION, INFORMATION OFFICER, SUPERINTENDENT OF BUSINESS AND FINANCE AND TREASURER, ASSESSMENT REVISION OFFICER, ASSISTANT ASSESSMENT REVISION OFFICER, ASSISTANT SUPERINTENDENT OF BUSINESS - FINANCE, ASSISTANT SUPERINTENDENT OF BUSINESS - OPERATIONS, ADMINISTRATIVE OFFICER AND CO-ORDINATOR OF RETARDED CHILDREN'S SCHOOLS, SUPERVISOR OF SCHOOL CAFETERIAS, ASSISTANT SUPERVISOR OF SCHOOL CAFETERIAS, MANAGERS OF SCHOOL CAFETERIAS, DUPLICATING ROOM SUPERVISOR, PURCHASING AGENT, ASSISTANT PURCHASING AGENT, DEPOT MANAGERS, CLERKS OF SUPPLY, FINANCE OFFICERS, OPERATIONS AND MAINTENANCE MANAGERS, MANAGER OF ENGINEERING AND NEW CONSTRUCTION, SUPERVISOR OF CARETAKERS, SUPERVISOR OF MAINTENANCE, CLERK OF WORKS, ASSISTANT SUPERVISORS OF CARETAKERS, ASSISTANT SUPERVISORS OF MAINTENANCE, ASSISTANT SUPERVISOR OF TRANSPORTATION, BUILDING SUPERINTENDENTS, SUPERINTENDENT OF PERSONNEL, PERSONNEL ADMINISTRATIVE ASSISTANTS, PERSONNEL OFFICER, SUPERINTENDENT OF PROGRAMME AND PLANNING, ASSISTANT SUPERINTENDENT OF PROGRAMME - CURRICULUM, ASSISTANT SUPERINTENDENT OF PROGRAMME - TECHNOLOGICAL SERVICES, PLANNING OFFICER, HEAD - AUDIO-VISUAL AIDS, HEAD - EDUCATIONAL TELEVISION CENTRE, PRODUCTION CO-ORDINATOR (LEARNING RESOURCES), HEAD - LIBRARY SERVICE CENTRE, CONSULTANT - LIBRARY SERVICES, PROFESSIONAL LIBRARIANS, HEAD LIBRARIANS, RESEARCH OFFICER AND DIRECTOR OF RESEARCH, ASSOCIATE RESEARCH OFFICERS, ASSISTANT RESEARCH OFFICERS, MANAGER OF DATA PROCESSING, ASSISTANT TO THE MANAGER OF DATA PROCESSING, SYSTEMS ANALYST, PRODUCER - DIRECTOR - E.T.V., COMPUTER ROOM SUPERVISOR, KEY PUNCH OPERATORS SUPERVISOR, ASSISTANT SUPERVISOR - AUDIO-VISUAL AIDS, PRODUCER - DIRECTOR - FILM (A.V.A.), AUDIO-VISUAL CONSULTANTS, SENIOR CONSULTANT (E.T.V.), CONTROLLER - A.V.A.-E.T.V., DISTRIBUTION OFFICER - E.T.V., CONSULTANT - ELEMENTARY PROGRAMMING, CONSULTANT - SECONDARY PROGRAMMING, TELEVISION TEACHERS, PRODUCTION MANAGER - E.T.V./A.V.A., SUPERVISOR OF ADULT EDUCATION, ASSISTANT SUPERVISOR OF ADULT EDUCATION, CONSULTANTS - TEACHING AND CURRICULUM, SUPERVISOR OF MacSKIMMING NATURAL SCIENCE FARM, OUTDOOR EDUCATION TECHNICIAN, SUPERINTENDENT OF STUDENT

SERVICES, ASSISTANT SUPERINTENDENT OF SPECIAL EDUCATION, CONSULTING CO-ORDINATORS, SPECIAL EDUCATION CONSULTANTS, DENTISTS, DENTAL HYGIENISTS, MEDICAL OFFICERS, PSYCHOLOGISTS, PSYCHOMETRISTS, STUDENT INTERNS, ATTENDANCE COUNSELLORS, SOCIAL WORKERS, HOME INSTRUCTION CO-ORDINATOR, JOB PLACEMENT OFFICERS, GUIDANCE COUNSELLORS, REGISTERED NURSES, SUPERINTENDENTS OF SCHOOLS, SPEECH THERAPIST, PHYSIOTHERAPISTS, TEACHERS AIDS, FRENCH LANGUAGE MONITORS, SECRETARY TO THE DIRECTOR OF EDUCATION, SECRETARY TO THE ASSISTANT DIRECTOR OF EDUCATION, RECORDING SECRETARY, SECRETARY TO THE SUPERINTENDENTS OF SCHOOLS, SECRETARY TO ADMINISTRATION OFFICER AND CO-ORDINATOR OF RETARDED CHILDREN'S SCHOOLS, PERSONS EMPLOYED IN THE PERSONNEL DEPARTMENT, SECRETARY TO THE SUPERINTENDENT OF BUSINESS - FINANCE & TREASURER, SECRETARY TO THE ASSISTANT SUPERINTENDENT OF BUSINESS, SECRETARY TO THE ASSISTANT SUPERINTENDENT OF BUSINESS OPERATIONS, SECRETARY TO THE FINANCE OFFICER, SECRETARY TO PLANNING OFFICER, SECRETARY TO THE EXECUTIVE ASSISTANT TO THE DIRECTOR OF EDUCATION, SECRETARY TO THE SUPERVISOR OF ADULT EDUCATION, SECRETARY TO THE ASSISTANT SUPERINTENDENT OF SPECIAL EDUCATION, SECRETARY TO THE SUPERINTENDENT OF STUDENT SERVICES, SECRETARY TO THE SUPERINTENDENT OF PROGRAMME, SECRETARY TO THE RESEARCH OFFICER AND DIRECTOR OF RESEARCH, SECRETARY TO THE CHIEF PSYCHOLOGIST, SECRETARY TO THE HEADS OF AVA AND ETV, SECRETARY TO THE CHIEF SOCIAL WORKER, SECRETARY TO THE HEAD OF LIBRARY SERVICES, DATA CONTROL CLERK IN DATA PROCESSING, ACCOUNTANT III EMPLOYED IN THE ACCOUNTING DEPARTMENT, THE PERSONS EMPLOYED IN DUPLICATING SERVICES, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND ON A CO-OPERATIVE TRAINING PROGRAMME, PERSONS EMPLOYED UNDER A TEACHING CONTRACT AND PERSONS COVERED BY A COLLECTIVE AGREEMENT DATED JUNE 1, 1971 BETWEEN THE RESPONDENT AND THE OTTAWA BOARD OF EDUCATION EMPLOYEES' ASSOCIATION." (332 EMPLOYEES IN THE UNIT). (HAVING REGARD THE AGREEMENT OF THE PARTIES).

UNIT #2: "ALL OFFICE, CLERICAL AND TECHNICAL EMPLOYEES OF THE RESPONDENT AT OTTAWA, REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND ON A CO-OPERATIVE TRAINING PROGRAMME IN THE CAPACITY OF OFFICE, CLERICAL OR TECHNICAL EMPLOYEES, SAVE AND EXCEPT DIRECTOR OF EDUCATION AND SECRETARY OF THE BOARD, EXECUTIVE ASSISTANT TO THE DIRECTOR OF EDUCATION, ASSISTANT DIRECTORS OF EDUCATION, INFORMATION OFFICER, SUPERINTENDENT OF BUSINESS AND FINANCE AND TREASURER, ASSESSMENT REVISION OFFICER, ASSISTANT ASSESSMENT REVISION OFFICER, ASSISTANT SUPERINTENDENT OF BUSINESS - FINANCE, ASSISTANT SUPERINTENDENT OF BUSINESS - OPERATIONS, ADMINISTRATIVE OFFICER AND CO-ORDINATOR OF RETARDED CHILDREN'S SCHOOLS, SUPERVISOR OF SCHOOL CAFETERIAS, ASSISTANT SUPERVISOR OF SCHOOL CAFETERIAS, MANAGERS OF SCHOOL CAFETERIAS, DUPLICATING ROOM SUPERVISOR, PURCHASING AGENT, ASSISTANT PURCHASING AGENT, DEPOT MANAGERS, CLERKS OF SUPPLY, FINANCE OFFICERS, OPERATIONS AND MAINTENANCE MANAGERS, MANGER OF ENGINEERING AND NEW CONSTRUCTION, SUPERVISOR OF CARETAKERS, SUPERVISOR OF MAINTENANCE, CLERK

OF WORKS, ASSISTANT SUPERVISORS OF CARETAKERS, ASSISTANT SUPERVISORS OF MAINTENANCE, ASSISTANT SUPERVISOR OF TRANSPORTATION, BUILDING SUPERINTENDENTS, SUPERINTENDENT OF PERSONNEL, PERSONNEL ADMINISTRATIVE ASSISTANTS, PERSONNEL OFFICER, SUPERINTENDENT OF PROGRAMME AND PLANNING, ASSISTANT SUPERINTENDENT OF PROGRAMME - CURRICULUM, ASSISTANT SUPERINTENDENT OF PROGRAMME - TECHNOLOGICAL SERVICES, PLANNING OFFICER, HEAD - AUDIO-VISUAL AIDS, HEAD - EDUCATIONAL TELEVISION CENTRE, PRODUCTION CO-ORDINATOR (LEARNING RESOURCES), HEAD - LIBRARY SERVICE CENTRE, CONSULTANT - LIBRARY SERVICES, PROFESSIONAL LIBRARIANS, HEAD LIBRARIANS, RESEARCH OFFICER AND DIRECTOR OF RESEARCH, ASSOCIATE RESEARCH OFFICERS, ASSISTANT RESEARCH OFFICERS, MANAGER OF DATA PROCESSING, ASSISTANT TO THE MANAGER OF DATA PROCESSING, SYSTEMS ANALYST, PRODUCER - DIRECTOR - E.T.V., COMPUTER ROOM SUPERVISOR, KEY PUNCH OPERATORS SUPERVISOR, ASSISTANT SUPERVISOR - AUDIO-VISUAL AIDS, PRODUCER - DIRECTOR - FILM (A.V.A.), AUDIO-VISUAL CONSULTANTS, SENIOR CONSULTANT (E.T.V.), CONTROLLER - A.V.A.-E.T.V., DISTRIBUTION OFFICER - E.T.V., CONSULTANT - ELEMENTARY PROGRAMMING, CONSULTANT - SECONDARY PROGRAMMING, TELEVISION TEACHERS, PRODUCTION MANAGER - E.T.V./A.V.A., SUPERVISOR OF ADULT EDUCATION, ASSISTANT SUPERVISOR OF ADULT EDUCATION, CONSULTANTS - TEACHING AND CURRICULUM, SUPERVISOR OF MACSKIMMING NATURAL SCIENCE FARM, OUTDOOR EDUCATION TECHNICIAN, SUPERINTENDENT OF STUDENT SERVICES, ASSISTANT SUPERINTENDENT OF SPECIAL EDUCATION, CONSULTING CO-ORDINATORS, SPECIAL EDUCATION CONSULTANTS, DENTISTS, DENTAL HYGIENISTS, MEDICAL OFFICERS, PSYCHOLOGISTS, PSYCHOMETRISTS, STUDENT INTERNS, ATTENDANCE COUNSELLORS, SOCIAL WORKERS, HOME INSTRUCTION CO-ORDINATOR, JOB PLACEMENT OFFICERS, GUIDANCE COUNSELLORS, REGISTERED NURSES, SUPERINTENDENTS OF SCHOOLS, SPEECH THERAPIST, PHYSIOTHERAPISTS, TEACHERS AIDS, FRENCH LANGUAGE MONITORS, SECRETARY TO THE DIRECTOR OF EDUCATION, SECRETARY TO THE ASSISTANT DIRECTOR OF EDUCATION, RECORDING SECRETARY, SECRETARY TO THE SUPERINTENDENTS OF SCHOOLS, SECRETARY TO ADMINISTRATION OFFICER AND CO-ORDINATOR OF RETARDED CHILDREN'S SCHOOLS, PERSONS EMPLOYED IN THE PERSONNEL DEPARTMENT, SECRETARY TO THE SUPERINTENDENT OF BUSINESS - FINANCE & TREASURER, SECRETARY TO THE ASSISTANT SUPERINTENDENT OF BUSINESS, SECRETARY TO THE ASSISTANT SUPERINTENDENT OF BUSINESS OPERATIONS, SECRETARY TO THE FINANCE OFFICER, SECRETARY TO PLANNING OFFICER, SECRETARY TO THE EXECUTIVE ASSISTANT TO THE DIRECTOR OF EDUCATION, SECRETARY TO THE SUPERVISOR OF ADULT EDUCATION, SECRETARY TO THE ASSISTANT SUPERINTENDENT OF SPECIAL EDUCATION, SECRETARY TO THE SUPERINTENDENT OF STUDENT SERVICES, SECRETARY TO THE RESEARCH OFFICER AND DIRECTOR OF RESEARCH, SECRETARY TO THE CHIEF PSYCHOLOGIST, SECRETARY TO THE HEADS OF AVA AND ETV, SECRETARY TO THE CHIEF SOCIAL WORKERS, SECRETARY TO THE HEAD OF LIBRARY SERVICES, DATA CONTROL CLERK IN DATA PROCESSING, ACCOUNTANT III EMPLOYED IN THE ACCOUNTING DEPARTMENT, THE PERSONS EMPLOYED IN DUPLICATING SERVICES, PERSONS EMPLOYED UNDER A TEACHING CONTRACT AND PERSONS COVERED BY THE COLLECTIVE AGREEMENT DATED JANUARY 1, 1971 BETWEEN THE RESPONDENT AND THE OTTAWA BOARD OF EDUCATION EMPLOYEES' ASSOCIATION." (62 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

1163-71-R: THE ASSOCIATION OF PROFESSIONAL LIBRARIANS OF THE HAMILTON PUBLIC LIBRARY (APPLICANT) V. HAMILTON PUBLIC LIBRARY BOARD (RESPONDENT).

UNIT: "ALL PROFESSIONAL LIBRARIANS EMPLOYED BY THE RESPONDENT AT HAMILTON, SAVE AND EXCEPT BRANCH HEADS AND DEPARTMENT HEADS, PERSONS ABOVE THE RANKS OF BRANCH HEAD AND DEPARTMENT HEAD, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 21 HOURS PER WEEK." (26 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

1486-71-R: THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL 2466 (APPLICANT) V. A AND W CARPENTRY (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF RENFREW, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

(SEE DECISION [1972] OLRB REP. 198).

1562-71-R: UNITED GLASS & CERAMIC WORKERS OF NORTH AMERICA, AFL-CIO-CLC (APPLICANT) V. BESTPIPE LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT AJAX, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (38 EMPLOYEES IN THE UNIT).

1568-71-R: CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) V. DOMINION BRIDGE COMPANY LIMITED, ONTARIO BRANCH (RESPONDENT).

UNIT: "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS, EMPLOYED BY THE RESPONDENT AT ITS MOUNT DENNIS PLANT, SAVE AND EXCEPT THE CHIEF ENGINEER AND THOSE ABOVE THE RANK OF CHIEF ENGINEER." (3 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

1569-71-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. PERTH COUNTY BOARD OF EDUCATION (RESPONDENT).

UNIT: "ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT IN THE COUNTY OF PERTH, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, AND PERSONS COVERED BY THE SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE LONDON AND DISTRICT BUILDING SERVICE WORKERS UNION, LOCAL 220 AFFILIATED WITH THE S.E.I.U. AND THE RESPONDENT." (55 EMPLOYEES IN THE UNIT).

1580-71-R: INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 793 (APPLICANT) V. THE CANADIAN KELLOGG COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTY OF LAMBTON ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS, AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (14 EMPLOYEES IN THE UNIT).

1589-71-R: CANADIAN FOOD AND ALLIED WORKERS LOCAL UNION 175, CHARTERED BY AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL - CIO - CLC (APPLICANT) V. M. LOEB (LONDON) LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS RETAIL STORES AT KINGSVILLE, SAVE AND EXCEPT MEAT DEPARTMENT EMPLOYEES, STORE MANAGER, PERSONS ABOVE THE RANK OF STORE MANAGER, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (17 EMPLOYEES IN THE UNIT).

(SEE DECISION [1972] OLRB REP. 197).

1590-71-R: CANADIAN FOOD AND ALLIED WORKERS LOCAL UNION 633, CHARTERED BY AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL - CIO - CLC (APPLICANT) V. M. LOEB (LONDON) LIMITED (RESPONDENT).

UNIT: "ALL MEAT DEPARTMENT EMPLOYEES OF THE RESPONDENT AT ITS RETAIL STORES AT KINGSVILLE, SAVE AND EXCEPT PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (3 EMPLOYEES IN THE UNIT).

1600-71-R: INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIP BUILDERS, BLACKSMITHS, FORGERS AND HELPERS, LOCAL #128 (APPLICANT) V. TANKS, VESSELS & PIPE LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT LONDON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (17 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

1619-71-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. CANADA SAFEWAY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT HAMILTON, SAVE AND EX-

CEPT ASSISTANT MANAGER, MEAT MANAGER, PERSONS ABOVE THE RANK OF ASSISTANT MANAGER, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (26 EMPLOYEES IN THE UNIT). (HAVING REGARD THEREFORE TO THE SUBMISSIONS OF THE PARTIES).

(SEE DECISION [1972] OLRB REP. 262).

1641-71-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. CANADA SAFEWAY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT HAMILTON REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (25 EMPLOYEES IN THE UNIT).

1642-71-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE CORPORATION OF THE BOROUGH OF NORTH YORK (RESPONDENT).

UNIT: "ALL DENTAL HYGIENISTS AND DENTAL ASSISTANTS IN THE EMPLOY OF THE RESPONDENT, SAVE AND EXCEPT DIRECTOR OF DENTAL SERVICES AND PERSONS ABOVE THE RANK OF DIRECTOR OF DENTAL SERVICES." (56 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

1643-71-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. TOWNSHIP OF MCGILLIVRAY (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED IN THE TOWNSHIP OF MCGILLIVRAY SAVE AND EXCEPT THE ROADS SUPERINTENDENT, PERSONS ABOVE THE RANK OF ROADS SUPERINTENDENT, OFFICE AND CLERICAL STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (3 EMPLOYEES IN THE UNIT).

1647-71-R: TEAMSTERS LOCAL UNION NO. 879 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. CRANE CANADA LTD., CRANE SUPPLY DIVISION (RESPONDENT) V. LOCAL 219 NATIONAL COUNCIL OF CANADIAN LABOUR (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT HAMILTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE, SALES AND SERVICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (8 EMPLOYEES IN THE UNIT).

1652-71-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (APPLICANT) V. GREENSPOON BROS. LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (86 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

1660-71-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. CANADIAN MACHINERY MOVERS LIMITED (RESPONDENT).

UNIT: "ALL MILLWRIGHTS AND MILLWRIGHTS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE TOWNSHIPS OF HARRISON, BURTON, SHAWANAGA, PURPEE, CARLING, FERGUSON, McDougall, Cowper, Foley and Conger in the District of Parry Sound, save and except non-working foremen and persons above the rank of non-working foreman." (2 EMPLOYEES IN THE UNIT).

(SEE DECISION [1972] OLRB REP. 189).

1661-71-R: INTERNATIONAL MOLDERS & ALLIED WORKERS UNION (APPLICANT) V. EXTRUDED PLASTIC PRODUCTS LTD. (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (41 EMPLOYEES IN THE UNIT). (FOR PURPOSES OF CLARITY THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT THE EMPLOYEES OF THE RESPONDENT WORKING IN THE ENGINEERING DEPARTMENT FORM PART OF THE OFFICE STAFF AND ARE NOT INCLUDED IN THE BARGAINING UNIT).

(SEE DECISION [1972] OLRB REP. 268).

1675-71-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE CORPORATION OF THE COUNTY OF PEEL (RESPONDENT).

UNIT: "ALL ROADS DEPARTMENT OFFICE STAFF AND ROADS CONSTRUCTION DIVISION INSIDE TECHNICAL STAFF OF THE RESPONDENT, SAVE AND EXCEPT ADMINISTRATIVE ASSISTANT, RIGHT-OF-WAY OFFICER, DESIGN SUPERVISOR, DRAFTING SUPERVISOR, PROJECT SUPERVISOR AND PERSONS ABOVE THE RANKS OF ADMINISTRATIVE ASSISTANT, RIGHT-OF-WAY OFFICER, DESIGN SUPERVISOR, DRAFTING SUPERVISOR AND PROJECT SUPERVISOR, AND PERSONS COVERED BY THE SUBSISTING COLLECTIVE AGREEMENTS BETWEEN THE RESPONDENT AND THE APPLICANT AND STUDENTS EMPLOYED FOR THE SCHOOL VACATION PERIOD." (13 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

1677-71-R: LITHOGRAPHERS AND PHOTOENGRAVERS INTERNATIONAL UNION, LOCAL 224 (APPLICANT) V. THE BOARD OF GOVERNORS, CARLETON UNIVERSITY (RESPONDENT) V. INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796 (INTERVENER).

UNIT: "ALL PRODUCTION EMPLOYEES EMPLOYED IN THE PRINTING AND BINDERY SECTION OF THE GRAPHIC SERVICES OF THE RESPONDENT AT OTTAWA, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, AND OFFICE STAFF." (19 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES). (FOR PURPOSES OF CLARITY THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT GRAPHIC ARTISTS, PHOTOGRAPHERS AND DARKROOM TECHNICIANS ARE NOT INCLUDED IN THE BARGAINING UNIT).

1678-71-R: LOCAL 2679, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. INTER-CONTINENTAL-DESIGN LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (46 EMPLOYEES IN THE UNIT).

1680-71-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. TOWNSHIP OF SAUGEEN (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE TOWNSHIP OF SAUGEEN, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE STAFF." (3 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

1683-71-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 93 (APPLICANT) V. CITY TILE & MARBLE (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN THE INSTALLATION OF RESILIENT FLOORING IN THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

1685-71-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL-CIO: CLC (APPLICANT) V. UNITED CO-OPERATIVES OF ONTARIO (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT #1: "ALL EMPLOYEES OF THE RESPONDENT AT ITS PLANT LOCATED AT 4004 DUNDAS STREET WEST IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, PERSONS

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (8 EMPLOYEES IN THE UNIT).

1717-71-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 1669 (APPLICANT) V. STEPHEN ZYSKO CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE DISTRICT OF THUNDER BAY, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

1726-71-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 837 (APPLICANT) V. BOT CONSTRUCTION (CANADA) LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF NIAGARA AND THE COUNTY OF HALDIMAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (30 EMPLOYEES IN THE UNIT).

1735-71-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 1190 (APPLICANT) V. E. L. A. CARPENTERS (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (7 EMPLOYEES IN THE UNIT).

1752-71-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 837 (APPLICANT) V. BAIOTTO CONSTRUCTION (NIAGARA) LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF NIAGARA AND THE COUNTY OF HALDIMAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

APPLICATIONS CERTIFIED SUBSEQUENT TO PRE-HEARING VOTE

1477-71-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. VERES WIRE INDUSTRY LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (45 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		44
NUMBER OF PERSONS WHO CAST BALLOTS	39	
NUMBER OF SPOILED BALLOTS	1	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	31	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	7	

1511-71-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. KAMRO LIGHT-ING PRODUCTS (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, HIGH SCHOOL TRAINEES, OFFICE AND SALES STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (76 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		76
NUMBER OF PERSONS WHO CAST BALLOTS	72	
NUMBER OF SPOILED BALLOTS	1	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	61	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	10	

1555-71-R: WAREHOUSEMEN AND MISCELLANEOUS DRIVERS UNION LOCAL 419 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUF-FEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. THE ONTARIO FOOD DIVISION OF THE OSHAWA GROUP LIMITED (RESPONDENT).

UNIT: "ALL GARAGE AND VEHICLE MAINTENANCE EMPLOYEES OF THE RESPONDENT AT ITS TWO LOCATIONS, 3185 AMERICAN DRIVE, MALTON, ONTARIO AND 125 THE QUEENSWAY, TORONTO 18, ONTARIO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, CLERICAL EMPLOYEES, AND PERSONS REG-ULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (19 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		18
NUMBER OF PERSONS WHO CAST BALLOTS	18	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	11	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	7	

1558-71-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) V. CHAP-
LEAU LUMBER COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS SAWMILL AND PLANING
MILL AT CHAPLEAU, TOWNSHIP OF PANET, DISTRICT OF SUDBURY, SAVE AND
EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, SCALERS, COOK,
COOKIES, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT
MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL
VACATION PERIOD." (133 EMPLOYEES IN THE UNIT). (HAVING REGARD TO
THE AGREEMENT OF THE PARTIES).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST		103
NUMBER OF PERSONS WHO CAST BALLOTS	95	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	71	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	24	

1585-71-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. NADCO HEALTH
EQUIPMENT LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT PORT CREDIT, SAVE AND EXCEPT
FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PER-
SONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK
AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (9 EMPLOYEES
IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST		9
NUMBER OF PERSONS WHO CAST BALLOTS	9	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	8	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	1	

1586-71-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. GREY MIX-
ING EQUIPMENT LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (42 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

NUMBER OF NAMES OF PERSONS ON VOTERS'	
LIST	41
NUMBER OF PERSONS WHO CAST BALLOTS	41
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	27
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	14

APPLICATION CERTIFIED SUBSEQUENT TO POST-HEARING VOTE

1264-71-R: INTERNATIONAL BROTHERHOOD OF PULP, SULPHITE AND PAPER
MILL WORKERS (APPLICANT) V. BROCK CONTAINERS (OTTAWA) LIMITED (RE-
SPONDENT) V. INTERNATIONAL WOODWORKERS OF AMERICA (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (46 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS'	
LIST	52
NUMBER OF PERSONS WHO CAST BALLOTS	44
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	29
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF INTERVENER	15

APPLICATIONS FOR CERTIFICATION DISMISSED DURING MARCH

NO VOTE CONDUCTED

18957-70-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL
837 (APPLICANT) V. G. M. GEST LIMITED (UTILITY DIVISION) (RESPONDENT)
V. LOCAL UNION 105, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS
(INTERVENER). (27 EMPLOYEES).

199-70-R: LABORERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 607
(APPLICANT) V. B-A CONSTRUCTION LTD. (RESPONDENT) V. UNITED BROTHER-
HOOD OF CARPENTERS AND JOINERS OF AMERICA (INTERVENER) V. GROUP OF
EMPLOYEES (OBJECTORS). (7 EMPLOYEES).

664-71-R: NATIONAL ASSOCIATION OF BROADCAST EMPLOYEES AND TECHNICIANS AFL-CIO-CLC (APPLICANT) V. THE OTTAWA BOARD OF EDUCATION (RESPONDENT). (287 EMPLOYEES).

787-71-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 1669 (APPLICANT) V. TIP TOP RUBBER DISTRIBUTORS - INDUSTRIAL DIVISION (RESPONDENT). (2 EMPLOYEES).

(SEE DECISION [1972] OLRB REP. 219).

840-71-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 1190 (APPLICANT) V. COMET CARPENTERS LTD. (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (6 EMPLOYEES).

1161-71-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. QUEEN'S UNIVERSITY AT KINGSTON (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (5 EMPLOYEES).

(SEE DECISION [1972] OLRB REP. 267).

1461-71-R: C. T. McDONALD EMPLOYEES ASSOCIATION (APPLICANT) V. C. T. McDONALD FOREST PRODUCTS LIMITED (RESPONDENT) V. LUMBER AND SAWMILL WORKERS' UNION LOCAL 2995, OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (INTERVENER). (73 EMPLOYEES).

1533-71-R: NATIONAL ASSOCIATION OF BROADCAST EMPLOYEES AND TECHNICIANS AFL CIO CLC (APPLICANT) V. BARRIE CABLE TV LIMITED (RESPONDENT). (6 EMPLOYEES).

(SEE DECISION [1972] OLRB REP. 212).

1534-71-R: NATIONAL ASSOCIATION OF BROADCAST EMPLOYEES AND TECHNICIANS AFL CIO CLC (APPLICANT) V. BARRIE CABLE TV LIMITED AND ORILLIA CABLE TV LIMITED (RESPONDENT). (9 EMPLOYEES).

1535-71-R: NATIONAL ASSOCIATION OF BROADCAST EMPLOYEES AND TECHNICIANS AFL CIO CLC (APPLICANT) V. ORILLIA CABLE TV LIMITED (RESPONDENT). (3 EMPLOYEES).

1540-71-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL & ORNAMENTAL IRON WORKERS, LOCAL 759 (APPLICANT) V. ALGOMA MAINTENANCE & SERVICES LTD. (RESPONDENT). (43 EMPLOYEES).

1542-71-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL #247 (APPLICANT) V. DALTON ENGINEERING AND CONSTRUCTION COMPANY (RESPONDENT). (3 EMPLOYEES).

1552-71-R: UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL UNION 71 (APPLICANT) V. VOLCANO LIMITED (LIMITEE) (RESPONDENT). (8 EMPLOYEES).

(SEE DECISION [1972] OLRB REP. 221).

1653-71-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) V. AUSTIN LUMBER (DALTON) LIMITED (RESPONDENT). (8 EMPLOYEES).

1705-71-R: THE CANADIAN LABOUR CONGRESS REPRESENTATIVE'S UNION (APPLICANT) V. THE CANADIAN LABOUR CONGRESS (RESPONDENT). (32 EMPLOYEES).

(SEE DECISION [1972] OLRB REP. 211).

1706-71-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA (APPLICANT) V. THE CONSUMERS MILLWORK COMPANY LIMITED (RESPONDENT). (2 EMPLOYEES).

CERTIFICATION DISMISSED SUBSEQUENT TO PRE-HEARING VOTE

1393-71-R: LONDON AND DISTRICT BUILDING SERVICE WORKERS' UNION, LOCAL 220, S.E.I.U., A.F. of L., C.I.O., C.L.C. (APPLICANT) V. KOMOKA NURSING HOMES LIMITED (RESPONDENT).

VOTING CONSTITUENCY: "ALL EMPLOYEES OF THE RESPONDENT AT R. R. #3, KOMOKA, SAVE AND EXCEPT PROFESSIONAL NURSING STAFF, SUPERVISORS, FOREMEN, PERSONS ABOVE THE RANK OF SUPERVISOR OR FOREMAN, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (60 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON REVISED		
VOTERS' LIST		34
NUMBER OF PERSONS WHO CAST BALLOTS		37
BALLOTS SEGREGATED AND NOT COUNTED	3	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	13	
NUMBER OF BALLOTS MARKED AGAINST		
APPLICANT	21	

1397-71-R: CANADIAN STEELWORKERS UNION OF CANADA (APPLICANT) V. ATLAS STEELS COMPANY, A DIVISION OF RIO ALGOM MINES LTD. (RESPONDENT) V. UNITED STEELWORKERS OF AMERICA (INTERVENER).

VOTING CONSTITUENCY: "ALL OFFICE, CLERICAL AND TECHNICAL EMPLOYEES OF THE RESPONDENT AT ITS PLANT AND OFFICES LOCATED AT CENTRE STREET IN THE CITY OF WELLAND, SAVE AND EXCEPT SUPERVISORS AND FOREMEN, PERSONS ABOVE THE RANK OF SUPERVISOR AND FOREMAN, SALESMEN, BUYERS, PLANT NURSES, MILL METALLURGISTS, SERVICE METALLURGISTS, RESEARCH METALLURGISTS, FINANCIAL ANALYSTS, BUDGET ANALYSTS, GRADUATE CHEMISTS, TECHNICAL ADVISORS, "KNOW-HOW" CO-ORDINATORS AND ADVISORS, JOB CLASSIFICATION ANALYSTS, METHODS ENGINEERS, DESIGN ENGINEERS, CONSTRUCTION ENGINEERS, EMPLOYEES OF THE INDUSTRIAL RELATIONS DEPARTMENT, ONE CONFIDENTIAL SECRETARY TO EACH OF THE PRESIDENT, ADMINISTRATIVE ASSISTANT TO THE PRESIDENT, VICE-PRESIDENT OF MANUFACTURING, VICE-PRESIDENT SALES AND MARKETING, VICE-PRESIDENT OF FINANCE, GENERAL MANAGER OF ATLAS TITANIUM, SENIOR VICE-PRESIDENT, MANAGER OF TECHNICAL AND MANUFACTURING SERVICES, MANAGER OF MATERIALS, VICE-PRESIDENT OF RESEARCH AND DEVELOPMENT, MANAGER OF INDUSTRIAL ENGINEERING, MANAGER OF PURCHASES, EMPLOYEES ENGAGED IN A GRADUATE TRAINING PROGRAM, CASUAL PART-TIME EMPLOYEES, PERSONS EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS ON A CO-OPERATIVE TRAINING BASIS WITH A UNIVERSITY, OR HIRED DURING THE SCHOOL VACATION PERIOD WHO ARE NOT PERFORMING WORK IN THE BARGAINING UNIT." (248 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	215
NUMBER OF PERSONS WHO CAST BALLOTS	216
NUMBER OF BALLOTS EXCLUDING SEGREGATED	
BALLOTS CAST BY PERSONS WHOSE NAMES	
APPEAR ON VOTERS' LIST	215
NUMBER OF SEGREGATED BALLOTS CAST	
BY PERSONS WHOSE NAMES DO NOT	
APPEAR ON VOTERS' LIST	1

(SEE DECISION [1972] OLRB REP. 274).

1547-71-R: SERVICE EMPLOYEES UNION, LOCAL 204, AFFILIATED WITH THE S.E.I.U., A.F. OF L. CIO, CLC. (APPLICANT) V. ESTATES-GENERAL INVESTMENTS LIMITED (RESPONDENT).

VOTING CONSTITUENCY: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT THE SHELL DATA COMPUTER CENTRE, 75 WYNFORD DRIVE, DON MILLS, ONTARIO, SAVE AND EXCEPT SUPERINTENDENTS AND PERSONS ABOVE THE RANK OF SUPERINTENDENT." (32 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		31
NUMBER OF PERSONS WHO CAST BALLOTS	29	
NUMBER OF SPOILED BALLOTS	1	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	13	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	15	

1640-71-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) V. CHAP-
LEAU LUMBER COMPANY LIMITED (RESPONDENT).

VOTING CONSTITUENCY: "ALL EMPLOYEES OF THE RESPONDENT AT ITS LOGGING
OPERATIONS IN THE TOWNSHIP OF CHEWETT, COCHRANE, EVANS, BUCKLAND, HAL-
SEY, LIPSETT AND RANSDEN, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE
RANK OF FOREMAN, COOK AND COOKIE, OFFICE AND SALES STAFF." (34 EM-
PLOYEES).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST		34
NUMBER OF PERSONS WHO CAST BALLOTS	23	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	10	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	13	

CERTIFICATION DISMISSED SUBSEQUENT TO POST-HEARING VOTE

1183-71-R: OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION
(APPLICANT) V. C. E. JAMIESON & COMPANY (DOMINION) LIMITED (RESPON-
DENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WINDSOR, SAVE AND EXCEPT
FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF
AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK."
(27 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST		24
NUMBER OF PERSONS WHO CAST BALLOTS	24	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	6	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	18	

1455-71-R: INTERNATIONAL UNION OF DOLL, TOY & NOVELTY WORKERS OF THE UNITED STATES & CANADA, LOCAL 905, AFL-CIO (APPLICANT) V. ELDON INDUSTRIES OF CANADA LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANKS OF FOREMAN AND FORELADY, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (41 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	23
NUMBER OF PERSONS WHO CAST BALLOTS	26
BALLOTS SEGREGATED AND NOT COUNTED	4
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	5
NUMBER OF BALLOTS MARKED AGAINST	17
APPLICANT	

1488-71-R: AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, A.F.L., C.I.O., C.L.C. (APPLICANT) V. ANIMAL MILK PRODUCTS LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WALKERTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (9 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON	
VOTERS' LIST	9
NUMBER OF PERSONS WHO CAST BALLOTS	9
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	3
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	6

1550-71-R: INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION 120 (APPLICANT) V. FREEMAN ELECTRIC LIMITED (RESPONDENT).

UNIT: "ALL ELECTRICIANS AND ELECTRICIANS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF OXFORD, PERTH, HURON, MIDDLESEX, BRUCE AND ELGIN, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST		4
NUMBER OF PERSONS WHO CAST BALLOTS	4	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	1	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	3	

APPLICATIONS FOR CERTIFICATION WITHDRAWN DURING MARCH

1591-71-R: LABORERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 607 (APPLICANT) V. ALGOMA MAINTENANCE & SERVICES LTD. (RESPONDENT). (6 EMPLOYEES).

1610-71-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL & ORNAMENTAL IRON WORKERS, LOCAL 759 (APPLICANT) V. NORTHERN ENGINEERING & SUPPLY CO. LTD. (RESPONDENT). (2 EMPLOYEES).

1613-71-R: SERVICE EMPLOYEES UNION LOCAL 268 AFFILIATED WITH THE S.E.I.U. AF OF L., C.I.O., & C.L.C. (APPLICANT) V. GORDON A. McEACHERN LIMITED, 21 McCAUL ST., TORONTO 133, ONTARIO (RESPONDENT). (11 EMPLOYEES).

1620-71-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. TRANSCAN CUSTOM HOMES LIMITED (RESPONDENT). (NO EMPLOYEES).

1681-71-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. NORTHDOWN SUPPLY EQUIPMENT LTD. (RESPONDENT) V. LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (INTERVENER). (8 EMPLOYEES).

1684-71-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. ACADIAN PLATERS COMPANY LIMITED (RESPONDENT). (85 EMPLOYEES).

1718-71-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. ACADIAN PLATERS COMPANY LIMITED (RESPONDENT). (25 EMPLOYEES).

1736-71-R: HOTELS, CLUBS, RESTAURANTS, TAVERNS EMPLOYEES' UNION LOCAL 261 (APPLICANT) V. THE MILL DINING LOUNGE (RESPONDENT). (39 EMPLOYEES).

APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS DISPOSED
OF DURING MARCH

1654-71-R: REJEAN BERNARD (APPLICANT) V. THE LUMBER AND SAWMILL WORKERS' UNION, LOCAL 2995, OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (RESPONDENT) V. CLOUTIER BROTHERS LTD. (INTERVENER). (23 EMPLOYEES). (WITHDRAWN).

1655-71-R: GROUP OF EMPLOYEES, WILLOW PRESS LIMITED (APPLICANT) V. TORONTO TYPOGRAPHICAL UNION, NO. 91 (RESPONDENT). (9 EMPLOYEES). (DISMISSED).

APPLICATION FOR DECLARATION OF SUCCESSOR STATUS DISPOSED OF DURING
MARCH

1573-71-R: CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL UNION 1344, HAMILTON BOARD OF EDUCATION NON-TEACHING EMPLOYEES (APPLICANT) V. THE BOARD OF EDUCATION OF THE CITY OF HAMILTON (RESPONDENT). (GRANTED).

APPLICATIONS FOR CONSENT TO PROSECUTE DISPOSED OF DURING MARCH

1420-71-U: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. TOWN OF THOROLD (RESPONDENT). (DISMISSED).

1579-71-U: ABE DICK MASONRY LIMITED (APPLICANT) V. HENRY MANCINELLI, LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 837 (RESPONDENT). (DISMISSED).

1617-71-U: THE COUNCIL OF PRINTING INDUSTRIES OF CANADA AND PHOTO ENGRAVERS AND ELECTROTYPERS LIMITED (APPLICANTS) V. KATHERINE ACKERMAN, ET AL (RESPONDENTS). (WITHDRAWN).

1618-71-U: THE CANADIAN LITHOGRAPHERS ASSOCIATION INC., COUNCIL OF PRINTING INDUSTRIES OF CANADA AND SOUTHAM MURRAY, A DIVISION OF THE SOUTHAM PRINTING COMPANY LIMITED (APPLICANTS) V. ROBERT ALLAN, PAUL ANTHONY, JIM ATREO, JIM AUSTIN, ERNEST BORDOCZ, BRUCE BENNETT, CY BERNSTEIN, NORMAN BERRY, RONALD CARTER, BRIAN COLLIN, ERNEST (BILL) CONNELL, GEORGE CUMMINGS, JAMES CURRIE, JOHN DIRCSA, DONALD DOBSON, JOSEPH FIORE, BOB FREEMAN, LEWIS GENTLE, JOE GOTTSCHALK, HORACE GUEST, HART HARTLIEF, ROBERT HALL, MICHAEL HAWORTH, DON HILLS, BRIAN HOCKIN, ROBERT JUDGE, KENNETH LARMOUR, KEN LEWIS, DEAN LOHMES, KEITH LOHMES, GEORGE LOIK, G. MATHEWS, JAMES MAXTED, CAMPBELL MCCARTNEY, JAMES McDONALD, REGINALD METCALFE, DAVE MILLAR, JOSEPH MILLERAY, KEN MILLS,

BRIAN NICHOLLS, W. PARLIAMENT, AUBREY PAYNE, WALTER PICAVET, JACK RAINEY, RAYMOND REID, GARY ROSS, ALBERT ROUSSEAU, VIC SALIBIAN, WAYNE SINCLAIR, HERBERT SPRINGATE, DON SKALLY, DON STEVENS, GORDON TURPIN, LUIGI VOLPINI, BARRY WHITAKER, FRANK BONOZEW, JOE CONQUISTI, PETER FLOWERS, JORGE GALVEIAS, GARRY GIASSON, LARRY HAMPTON, KEN HODGE, JIM HYLAND, GEORGE KELLY, JOHN KELLY, ARTHUR LYNAS, BRENT LONG, DENNIS MORTIMER, REG. NOBLE, MICHAEL PERRIN, LAWRENCE READING, PAUL RITCHIE, DAVID ROGERS, FRANK STEVEN, JOHN TURNER, WAYNE WILLCOCKS, LEN BROWN, BRUNO CONQUISTI, LEONARD FRANZE, WOLF HOOK, KEVIN PITMAN & DOUG SLOANE (RESPONDENTS). (GRANTED).

COMPLAINTS UNDER SECTION 79 (FORMERLY S. 65) (UNFAIR LABOUR PRACTICE)

DISPOSED OF DURING MARCH

1202-71-U: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) (COMPLAINANT) V. NORTHERN ELECTRIC COMPANY LIMITED (RESPONDENT). (DISMISSED).

(SEE DECISION [1972] OLRB REP. 205).

1291-71-U: GEORGE C. BAIRD (COMPLAINANT) V. LOCAL 647, INTERNATIONAL BROTHERHOOD OF TEAMSTERS (RESPONDENT) V. RUTHERFORD'S DAIRY LIMITED (INTERVENER). (DISMISSED).

(SEE DECISION [1972] OLRB REP. 240).

1358-71-U: WILLIAM WARCHOW, ESQ., BUSINESS MANAGER, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL UNION 586 (COMPLAINANT) V. DONALD SERVANT ELECTRIC LIMITED (RESPONDENT). (DISMISSED).

(SEE DECISION [1972] OLRB REP. 226).

1401-71-U: LYLE CRAWFORD (COMPLAINANT) V. JACK MCCORMACK, KEN MCCORMACK, ROBERT LISSO (RESPONDENTS). (WITHDRAWN).

1448-71-U: LYLE CRAWFORD (COMPLAINANT) V. THE CBRT & GW, AND UNION STEWARD GORD IRVINE (RESPONDENT). (WITHDRAWN).

1524-71-U: RETAIL CLERKS INTERNATIONAL ASSOCIATION (COMPLAINANT) V. SUNNYBROOK FOOD MARKET (KEELE) LTD. (RESPONDENT). (DISMISSED).

(SEE DECISION [1972] OLRB REP. 210).

1628-71-U: INTERNATIONAL UNION OF DISTRICT 50, ALLIED AND TECHNICAL WORKERS OF THE UNITED STATES AND CANADA (COMPLAINANT) V. SPECIALIZED PARCEL DELIVERY AND HANDLERS UNION (RESPONDENT). (WITHDRAWN).

1645-71-U: HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION LOCAL 280, A.F.L., C.I.O., CLC. (COMPLAINANT) V. CEDARBRAE HOMES LIMITED KNOWN AS THUNDERBIRD MOTOR HOTEL (RESPONDENT). (WITHDRAWN).

1734-71-U: HOTELS, CLUBS, RESTAURANTS, TAVERNS EMPLOYEES, UNION, LOCAL 261, A.F.L.-C.I.O.-C.L.C. 1091 WELLINGTON ST., OTTAWA, ONTARIO (COMPLAINANT) V. THE MILL DINING LOUNGE, 555 THE OTTAWA RIVER PARKWAY (RESPONDENT). (WITHDRAWN).

APPLICATIONS UNDER SECTION 39 (FORMERLY S. 35(A)) DISPOSED OF DURING

MARCH

139-70-M: ANTHONY J. VIS (APPLICANT) V. THE HAMILTON BEVERAGE DISPENSERS UNION, LOCAL 197 (RESPONDENT TRADE UNION) V. SHERATON LIMITED - SHERATON-CONNAUGHT HOTEL (RESPONDENT EMPLOYER). (GRANTED).

(SEE DECISION [1972] OLRB REP. 249).

148-70-M: GRACE MIEDEMA (APPLICANT) V. LONDON AND DISTRICT BUILDING SERVICE WORKERS' UNION, LOCAL 220, S.E.I.U., A.F. of L., C.I.O., C.L.C. (RESPONDENT TRADE UNION) V. VICTORIA HOSPITAL BOARD OF TRUSTEES (RESPONDENT EMPLOYER). (GRANTED).

(SEE DECISION [1972] OLRB REP. 276).

196-70-M: ISOBEL JOY LINDER (APPLICANT) V. THE CANADIAN UNION OF PUBLIC EMPLOYEE LOCAL No. 79 (RESPONDENT TRADE UNION) V. THE CORPORATION OF THE MUNICIPALITY OF METROPOLITAN TORONTO (RESPONDENT EMPLOYER). (GRANTED).

1079-71-M: JOHN H.A. PLUIMERS (APPLICANT) V. INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, LOCAL 880 (RESPONDENT TRADE UNION) V. MAEDEL'S BEVERAGES LIMITED (RESPONDENT EMPLOYER). (GRANTED).

1627-71-M: MARK VANDERVLIEET (APPLICANT) V. CANADIAN UNION OF PUBLIC EMPLOYEES - C.L.C., ONTARIO HYDRO EMPLOYEES' UNION LOCAL 1000 (RESPONDENT TRADE UNION) V. THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO (RESPONDENT EMPLOYER). (GRANTED).

APPLICATIONS FOR CONSENT TO EARLY TERMINATION OF COLLECTIVE AGREEMENT

1649-71-M: FEASBY SERVICES LTD., FEASBY FABRIC CARE (LINWELL) LTD. (EMPLOYER) V. LAUNDRY, DRY CLEANING AND DYE HOUSE WORKERS' INTERNATIONAL UNION, LOCAL 351 (TRADE UNION). (GRANTED).

1692-71-M: THE PARISIAN LAUNDRY COMPANY OF TORONTO LIMITED (EMPLOYER) V. LAUNDRY, DRY CLEANING AND DYE HOUSE WORKERS' INTERNATIONAL UNION, LOCAL 351 (TRADE UNION). (GRANTED).

APPLICATION UNDER SECTION 55 (FORMERLY S. 47A) DISPOSED OF DURING

MARCH

1566-71-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL 2486 (APPLICANT) V. KINGSWAY BUILDERS (RESPONDENT) V. EMPLOYEE (OBJECTOR). (DISMISSED).

(SEE DECISION [1972] OLRB REP. 224).

JURISDICTIONAL DISPUTE

1423-71-JD: ELLIS DON LIMITED (COMPLAINANT) V. ACME LATHING CO. LTD.; EASTWAY CONTRACTING COMPANY; CARPENTERS' DISTRICT COUNCIL OF TORONTO AND VICINITY, ON BEHALF OF LOCAL UNIONS 27, 666, 681, 1133, 1747, 1963, 3227 AND 3233 OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA; LOCAL 97, WOOD, WIRE AND METAL LATHERS INTERNATIONAL UNION; LOCAL 562, WOOD, WIRE AND METAL LATHERS INTERNATIONAL UNION (RESPONDENTS). (DISMISSED).

(SEE DECISION [1972] OLRB REP. 215).

APPLICATIONS FOR DETERMINATION UNDER SECTION 95(2) (FORMERLY S. 79(2))

DISPOSED OF DURING MARCH

853-71-M: CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 167 (APPLICANT) V. THE CORPORATION OF THE CITY OF HAMILTON (RESPONDENT).

(SEE DECISION [1972] OLRB REP. 223).

1313-71-M: THE KITCHENER CITY HALL OFFICE AND CLERICAL STAFF, LOCAL UNION 791, CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE CORPORATION OF THE CITY OF KITCHENER (RESPONDENT).

1329-71-M: LE SYNDICAT DE L'INDUSTRIE DE L'IMPRIMERIE OTTAWA-HULL (APPLICANT) V. LE DROIT (RESPONDENT).

1330-71-M: LE SYNDICAT DE L'INDUSTRIE DE L'IMPRIMERIE OTTAWA-HULL (APPLICANT) V. LE DROIT (RESPONDENT).

1436-71-M: TORONTO BOARD OF EDUCATION (APPLICANT) V. LOCAL 1325 CANADIAN UNION OF PUBLIC EMPLOYEES (RESPONDENT).

1625-71-M: OFFICE WORKERS OF THE INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (U.A.W.) (APPLICANT) V. ALLIED CHEMICAL CANADA, LTD. (RESPONDENT). (DISMISSED).

REFERENCES TO BOARD PURSUANT TO SECTION 96 (FORMERLY S. 79A)

1410-71-M: TORONTO TYPOGRAPHICAL UNION No. 91 (TRADE UNION) V. THE BRYANT PRESS LIMITED (EMPLOYER).

(SEE DECISION [1972] OLRB REP. 186).

1575-71-M: TREMWAYS LIMITED FORMERLY SMELLIE'S TRANSPORT 1969 LTD. (EMPLOYER) V. TEAMSTERS LOCAL UNION No. 879 - AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (TRADE UNION). (DISMISSED).

APPLICATION FOR RECONSIDERATION OF BOARD'S DECISION - CERTIFICATION

1005-71-R: PARNELL FOODS LIMITED (TORONTO DIVISION) (APPLICANT) V. LOCAL 908, UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA, AFL:CIO:CLC (RESPONDENT) V. RETAIL CLERKS INTERNATIONAL ASSOCIATION (INTERVENER #1) V. CERTAIN EMPLOYEES (INTERVENER #2). (REQUEST DENIED).

APPLICATION FOR RECONSIDERATION OF BOARD'S DECISION - SECTION 79

(FORMERLY S. 65)

939-71-U: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (COMPLAINANT) V. MILL FARMS PRODUCE LTD. (RESPONDENT). (REQUEST DENIED).

STATISTICAL TABLES - FISCAL YEAR 1971-72

TABLE I

APPLICATIONS AND COMPLAINTS FILED WITH THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER FILED		
	FISCAL YEAR 1971-72	FISCAL YEAR 1971-72	FISCAL YEAR 1970-71
I. CERTIFICATION	251	978	1014
II. DECLARATION TERMINATING BARGAINING RIGHTS	14	72	74
III. DECLARATION OF SUCCESSOR STATUS	9	23	23
IV. DECLARATION THAT STRIKE UNLAWFUL	5	44	72
V. DECLARATION THAT LOCK-OUT UNLAWFUL	-	1	5
VI. CONSENT TO PROSECUTE	21	171	174
VII. COMPLAINT OF UNFAIR PRACTICE IN EMPLOYMENT (SECTION 79) (FORMERLY SECTION 65)	52	193	145
VIII. MISCELLANEOUS	<u>31</u>	<u>122</u>	<u>125</u>
TOTAL	<u>383</u>	<u>1604</u>	<u>1632</u>

TABLE II

HEARINGS OF THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER		
	FISCAL YEAR 1971-72	FISCAL YEAR 1971-72	FISCAL YEAR 1970-71
HEARINGS AND CONTINUATION OF HEARINGS BY THE BOARD	248	1040	1038

TABLE IIIAPPLICATIONS AND COMPLAINTS DISPOSED OF BY THE ONTARIO LABOUR RELATIONSBOARD BY MAJOR TYPES

	NUMBER DISPOSED OF		
	FISCAL YEAR	FISCAL YEAR	
	<u>1971-72</u>	<u>1971-72</u>	<u>1970-71</u>
I. CERTIFICATION	228	943	1074
II. DECLARATION TERMINATING BARGAINING RIGHTS	11	67	81
III. DECLARATION OF SUCCESSOR STATUS	1	7	21
IV. DECLARATION THAT STRIKE UNLAWFUL	6	42	75
V. DECLARATION THAT LOCK-OUT UNLAWFUL	-	3	5
VI. CONSENT TO PROSECUTE	16	172	180
VII. COMPLAINT OF UNFAIR PRACTICE IN EMPLOYMENT (SECTION 79) (FORMERLY SECTION 65)	35	150	156
VIII. MISCELLANEOUS	<u>55</u>	<u>146</u>	<u>107</u>
TOTAL	352	1530	1699
	<u>==</u>	<u>==</u>	<u>==</u>

TABLE IV
APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD
BY TYPE AND DISPOSITION

	NUMBER OF APPLICATIONS			NUMBER OF EMPLOYEES*		
	FISCAL YEAR 1971-72	1971-72	1970-71	FISCAL YEAR 1971-72	1971-72	1970-71
I. CERTIFICATION						
GRANTED	135	556	703	5030	16433	21987
DISMISSED	62	274	259	3640	12105	10451
WITHDRAWN	<u>31</u>	<u>113</u>	<u>112</u>	<u>669</u>	<u>2211</u>	<u>3333</u>
TOTAL	228	943	1074	9339	30749	35771
	==	==	==	==	==	==
II. TERMINATION OF BARGAINING RIGHTS						
GRANTED	6	32	44	92	2226	1139
DISMISSED	3	25	27	53	702	1994
WITHDRAWN	<u>2</u>	<u>10</u>	<u>10</u>	<u>182</u>	<u>549</u>	<u>1127</u>
TOTAL	11	67	81	327	3477	4260
	==	==	==	==	==	==

*THESE FIGURES REFER TO THE NUMBER OF EMPLOYEES DIRECTLY AFFECTED AND ARE BASED ON THE NUMBER OF EMPLOYEES IN THE BARGAINING UNITS AT THE TIME THE APPLICATION FOR CERTIFICATION WERE FILED WITH THE BOARD. TOTALS FOR APPLICATIONS DISMISSED AND WITHDRAWN ARE APPROXIMATE.

TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD
BY TYPE AND DISPOSITION (CONTINUED)

		NUMBER OF APPLICATIONS		
		FISCAL YEAR	FISCAL YEAR	
		1971-72	1971-72	1970-71
III.	<u>DECLARATION THAT STRIKE</u> <u>UNLAWFUL</u>			
	GRANTED	1	9	6
	DISMISSED	-	4	2
	WITHDRAWN	<u>5</u>	<u>31</u>	<u>67</u>
	TOTAL	6	44	75
		=	=	=
IV.	<u>DECLARATION THAT LOCKOUT</u> <u>UNLAWFUL</u>			
	GRANTED	-	-	-
	DISMISSED	-	2	2
	WITHDRAWN	<u>-</u>	<u>-</u>	<u>3</u>
	TOTAL	-	2	5
		=	=	=
V.	<u>CONSENT TO PROSECUTE</u>			
	GRANTED	1	31	38
	DISMISSED	5	67	22
	WITHDRAWN	<u>10</u>	<u>74</u>	<u>120</u>
	TOTAL	16	172	180
		=	=	=
VI.	<u>COMPLAINT OF UNFAIR</u> <u>PRACTICE IN EMPLOYMENT</u> <u>(SECTION 79) (FORMERLY</u> <u>SECTION 65)</u>			
	GRANTED	4	19	10
	DISMISSED	10	36	38
	WITHDRAWN	<u>21</u>	<u>95</u>	<u>108</u>
	TOTAL	35	150	156
		=	=	=

TABLE V

REPRESENTATION VOTES IN CERTIFICATION APPLICATIONS DISPOSED OF
BY THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER OF VOTES		
	FISCAL YEAR	FISCAL YEAR	
	1971-72	1971-72	1970-71
<u>CERTIFICATION AFTER VOTE*</u>			
PRE-HEARING VOTE	10	34	13
POST-HEARING VOTE	14	59	43
BALLOTS NOT COUNTED	-	1	-
<u>DISMISSED AFTER VOTE</u>			
PRE-HEARING VOTE	12	37	13
POST-HEARING VOTE	10	59	49
BALLOTS NOT COUNTED	<u>2</u>	<u>3</u>	<u>3</u>
TOTAL	48	193	121
	<u> </u>	<u> </u>	<u> </u>

*INCLUDES APPLICANT-INTERVENER APPLICATIONS IN WHICH BOTH APPLICANT AND INTERVENER APPLY FOR A NEW UNIT AND EITHER APPLICANT OR INTERVENER IS CERTIFIED.

TABLE VI

REPRESENTATION VOTES IN TERMINATION APPLICATIONS DISPOSED OF
BY THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER OF VOTES		
	FISCAL YEAR	FISCAL YEAR	
	1971-72	1971-72	1970-71
*RESPONDENT UNION SUCCESSFUL	-	1	3
RESPONDENT UNION UNSUCCESSFUL	<u>6</u>	<u>21</u>	<u>30</u>
TOTAL	6	22	33
	<u> </u>	<u> </u>	<u> </u>

*IN TERMINATION PROCEEDINGS WHERE A VOTE IS TAKEN THE APPLICANT IS A GROUP OF EMPLOYEES OR THE EMPLOYER; THE INCUMBENT UNION IS THUS THE RESPONDENT.

72
71] OLRB REP.

PAGES 287 - 395

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54



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ONTARIO LABOUR RELATIONS BOARD

154

ONTARIO LABOUR RELATIONS BOARD REPORTS

A MONTHLY SERIES OF DECISIONS FROM THE

ONTARIO LABOUR RELATIONS BOARD

CITED [1972] OLRB REP.

CASES REPORTED

BRYANT PRESS LIMITED AND TORONTO TYPOGRAPHICAL UNION No. 91, ITU AND GROUP OF EMPLOYEES.....	301
CANADIAN PACIFIC RAILWAYS AND B.R.C. L. 855 RE MURRAY GETTY.....	287
CIVIL SERVICE OF ONTARIO, INC. RE THOMAS J. BERRY.....	350
COLLINGWOOD PUBLIC UTILITIES COMMISSION RE APPI SIKKEMA AND C.U.P.E. L. 1217.....	289
CORPORATION OF THE TOWN OF THOROLD RE C.U.P.E.....	383
DESOURDY CONSTRUCTION LIMITED RE UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, L. 2486 AND EMPLOYEE.....	371
EMPIRE BENTWOOD INDUSTRIES LIMITED RE I.W.A.....	362
ERB TRANSPORT LIMITED RE GENERAL TRUCK DRIVERS UNION, TEAMSTERS L. 938 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA.....	388
FEDERAL PACKAGING AND PARTITION COMPANY LIMITED RE T.W.U.A., AFL CIO CLC AND FEDERAL PACKAGING EMPLOYEES ASSOCIATION AND GROUP OF EMPLOYEES.....	316
FITZPATRICK, J. G., CONSTRUCTION LIMITED RE UNITED BROTHER- HOOD OF CARPENTERS AND JOINERS OF AMERICA L. 249 KINGSTON ONTARIO.....	377
FORD OF CANADA - MRS. AUDREY JOHNSON RE MAX MORAZE.....	387
GENERAL MOTORS OF CANADA LIMITED RE THEODORE HOGETERP AND UAW, L. 222.....	348
INTER-CITY TRUCK LINES LIMITED, AND T.C.W.J., L. 880.....	385
LLOYDAIRE (1969) LIMITED RE U.E.....	361
MARBON DIVISION, BORG-WARNER (CANADA) LIMITED RE INTERNA- TIONAL UNION OF OPERATING ENGINEERS L. 796 AND EMPLOYEE.....	360
NAPANEE INDUSTRIES RE PERCY WOODS.....	356
NORTHERN ELECTRIC COMPANY LIMITED RE U.A.W. AND CANADIAN UNION OF COMMUNICATION WORKERS AND U.E.....	366

PRESTOLITE COMPANY, DIVISION OF ELTRA OF CANADA LIMITED RE UAW AND C.U.O.E.....	359
PUBLIC GENERAL HOSPITAL SOCIETY OF CHATHAM RE CATHERINE GRACE HORNEMAN (MISS) AND SERVICE EMPLOYEES' UNION, L. 210.....	369
ST. ELIZABETH NURSING HOME RE SERVICE EMPLOYEES UNION, L. 532.....	378
SIVI CONSTRUCTION LIMITED RE L.I.U. L. 183 AND O.P.C.M. L. 172.....	367
S.M.W. RE VICTOR A. D. DANIELS.....	288
SOUTHAM-MURRAY, A DIVISION OF SOUTHAM PRINTING COMPANY LIMITED AND TORONTO PHOTO ENGRAVERS UNION, L. 35, P.L.P.I.U. RE TORONTO TYPOGRAPHICAL UNION No. 91, I.T.U.....	348
SUNRISE PAVING & CONSTRUCTION CO. LTD. RE L.I.U., L. 183 AND O.P.C.M. L. 172.....	313
T.C.W.H. L. 880, WILFRED P. MAY, PRESIDENT, RYANCRETE- STERLING PRODUCTS, WINDSOR, ONTARIO, A DIVISION OF LAKE ONTARIO CEMENT LIMITED, TORONTO, ONTARIO RE DENNIS H. O'KEEFE LEDGER No. 64300 T.C.W.H. L. 880 WINDSOR, ONT.....	298
TEKPAK AUTOMATED SYSTEMS LIMITED RE CLAIRE DUBEAU AND C.U.G.E.....	376
TEMPLETON SUR-LOK LIMITED RE C.U.G.E. AND T.W.U.A., CLC, AFL-CIO.....	312
TEXTURON YARNS LIMITED RE I.W.A.....	305
UNITED STEEL WORKERS, L. 4912 RE PERCY WOODS.....	353
400 UNIVERSITY AVENUE PROSPECT COMPANY RE C.U.O.E. - L. 101.....	373
VERSASERVICES LIMITED AND C.U.G.E.....	306
ZOTTO, DEL, PROPERTY MANAGEMENT RE ONTARIO HOUSING CORPORA- TION EMPLOYEES L. 767, C.U.P.E.....	375

INDEX OF CASES

ADJOURNMENT - PRACTICE - TO GRANT REQUEST FOR ADJOURNMENT WHEN MADE WITH CONSENT OF ALL PARTIES OR WHERE REASON FOR THE ADJOURNMENT IS BEYOND THE CONTROL OF THE PARTY MAKING THE REQUEST - WHERE COUNSEL HAS DUE NOTICE OF BOARD HEARING - EFFECT OF ANOTHER COMMITMENT - WHETHER BOARD WILL GRANT REQUEST - WHETHER FULL OPPORTUNITY TO PRESENT EVIDENCE.	
SERVICE EMPLOYEES UNION, LOCAL 532 v. ST. ELIZABETH NURSING HOME AND SERVICE EMPLOYEES UNION, LOCAL 532, v. ST. ELIZABETH NURSING HOME.....	378
BARGAINING RIGHTS - COLLECTIVE AGREEMENT - CONCILIATION - WHETHER A SERIES OF DOCUMENTS WILL MEET THE REQUIRE- MENTS OF SECTION 1(1)(E) - WHETHER A LETTER OF UNDER- STANDING A CONDITION PRECEDENT TO OR COLLATERAL TO EN- TERING A COLLECTIVE AGREEMENT - S15(1) - INTENT AND PURPOSE - S96 - WHETHER MINISTER ADVISED TO APPOINT A CONCILIATION OFFICER.	
VERSASERVICES LIMITED v. CANADIAN UNION OF GENERAL EMPLOYEES.....	306
BARGAINING RIGHTS - TRADE UNION - REPRESENTATION VOTE - PETITION - PERSONS EMPLOYED IN A MANAGERIAL CAPACITY HOLD EXECUTIVE OFFICE IN AN ASSOCIATION - S40 - WHETHER AGREEMENT NEGOTIATED WITH EMPLOYER BY ASSOCIATION VALID - S12 - WHETHER ASSOCIATION EN- TITLED TO PARTICIPATE IN A REPRESENTATION VOTE - WHETHER CONFERRED STATUS OF A CERTIFIABLE ORGANIZA- TION - PRESENCE OF MANAGERIAL PERSONS AT A MEETING OF EMPLOYEES - UNDUE INFLUENCE - WHETHER PETITION VOLUNTARILY REFLECTS THE WISHES OF EMPLOYEES.	
TEXTILE WORKERS UNION OF AMERICA, AFL-CIO-CLC v. FEDERAL PACKAGING AND PARTITION COMPANY LIMITED v. FEDERAL PACKAGING EMPLOYEES ASSOCIATION v. GROUP OF EMPLOYEES.....	316
BARGAINING UNIT - EMPLOYEE - PRACTICE - WHETHER EMPLOYEE A MEMBER OF THE APPROPRIATE BARGAINING UNIT - EFFECT OF BEING EMPLOYED INCIDENTALLY IN BARGAINING UNIT WORK - WHETHER AN INTERESTED PARTY TO THE PROCEEDINGS.	

IV

INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL
796 v. MARBON DIVISION, BORG-WARNER (CANADA)
LIMITED v. EMPLOYEE.....

360

BARGAINING UNIT - REPRESENTATION VOTE - WHETHER APPLICANT
CAN REPRESENT STATIONARY ENGINEERS UNDER S6(2) - EFFECT
OF S6(1) - WHETHER CAN REPRESENT STATIONARY ENGINEERS
AS PART OF ON ALL EMPLOYEE UNIT.

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND
AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) v.
THE PRESTOLITE COMPANY, DIVISION OF ELTRA OF CANADA
LIMITED v. CANADIAN UNION OF OPERATING ENGINEERS.....

359

BARGAINING UNIT - WHERE ONLY ONE LOCATION IN GEOGRAPHIC
AREA - BOARD PRACTICE - WHETHER BOARD WILL RESTRICT
UNIT TO MUNICIPAL ADDRESS.

UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA
(UE) v. LLOYDAIRE (1969) LIMITED.....

361

CHARGES - CONSTRUCTION INDUSTRY - PRACTICE - STATUS TO
INTERVENE - WHETHER A PARTY MAY ADDUCE EVIDENCE IN
THE ROLE OF "AMICUS TRIBUNAE" - WHETHER PARTY RE-
PRESENTS EMPLOYEES AFFECTED BY THE APPLICATION -
S47 OF BOARD'S RULES - WHETHER A PARTY MAY MAKE
CHARGES ON BEHALF OF A PERSON DEPRIVED OF STATUS
TO PARTICIPATE IN THE PROCEEDINGS.

LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL
183 v. SUNRISE PAVING & CONSTRUCTION CO. LTD. v. OPER-
ATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL
ASSOCIATION OF THE UNITED STATES AND CANADA, LOCAL
UNION 172.....

313

COLLECTIVE AGREEMENT - CONCILIATION - BARGAINING RIGHTS -
WHETHER A SERIES OF DOCUMENTS WILL MEET THE REQUIRE-
MENTS OF SECTION 1(1)(E) - WHETHER A LETTER OF UNDER-
STANDING A CONDITION PRECEDENT TO OR COLLATERAL TO EN-
TERING A COLLECTIVE AGREEMENT - S15(1) - INTENT AND
PURPOSE - S96 - WHETHER MINISTER ADVISED TO APPOINT
A CONCILIATION OFFICER.

VERSASERVICES LIMITED v. CANADIAN UNION OF GENERAL
EMPLOYEES.....

306

CONCILIATION - BARGAINING RIGHTS - COLLECTIVE AGREEMENT -
 WHETHER A SERIES OF DOCUMENTS WILL MEET THE REQUIRE-
 MENTS OF SECTION 1(1)(E) - WHETHER A LETTER OF UNDER-
 STANDING A CONDITION PRECEDENT TO OR COLLATERAL TO EN-
 TERING A COLLECTIVE AGREEMENT - S15(1) - INTENT AND
 PURPOSE - S96 - WHETHER MINISTER ADVISED TO APPOINT
 A CONCILIATION OFFICER.

VERSASERVICES LIMITED v. CANADIAN UNION OF GENERAL
 EMPLOYEES.....

306

CONSTITUTIONAL LAW - FAIR REPRESENTATION - JURISDICTION -
BRITISH NORTH AMERICA ACT (1867) 30-31 VICT C3
S92(10)(A) - THE CANADA LABOUR CODE R.S.C. 1970
CL-1 S2(B) - INTERPRETATION - WHETHER THE BOARD
 SHOULD ASSERT JURISDICTION TO HEAR A COMPLAINT
 UNDER S79 - WHETHER COMPLAINT AGAINST A TRADE
 UNION ALLEGING VIOLATION OF S60 IS SEVERABLE -
 WHETHER A MATTER OF PROPERTY AND CIVIL RIGHTS.

WILLIAM CAMPBELL v. INTER-CITY TRUCK LINES LIMITED,
 AND TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS
 OF AMERICA, LOCAL UNION 880.....

385

CONSTITUTIONAL LAW - PRACTICE - FAIR REPRESENTATION - JURIS-
 DICTION - WHETHER BOARD HAS JURISDICTION TO PROCESS COM-
 PLAINT - WHETHER PRIMA FACIE CASE - APPLICATION OF S46
 OF THE BOARD'S RULES OF PROCEDURE.

MURRAY GETTY v. THE CANADIAN PACIFIC RAILWAYS AND
 BROTHERHOOD RAILWAY CARMEN OF THE UNITED STATES AND
 CANADA, LOCAL 855.....

287

CONSTRUCTION INDUSTRY - PRACTICE - CHARGES - STATUS TO
 INTERVENE - WHETHER A PARTY MAY ADDUCE EVIDENCE IN
 THE ROLE OF "AMICUS TRIBUNAE" - WHETHER PARTY RE-
 PRESENTS EMPLOYEES AFFECTED BY THE APPLICATION - S47
 OF BOARD'S RULES - WHETHER A PARTY MAY MAKE CHARGES
 ON BEHALF OF A PERSON DEPRIVED OF STATUS TO PARTICI-
 PATE IN THE PROCEEDINGS.

LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA,
 LOCAL 183 v. SUNRISE PAVING & CONSTRUCTION CO. LTD.
 v. OPERATIVE PLASTERERS' AND CEMENT MASONS' INTER-
 NATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA,
 LOCAL UNION 172.....

313

VI

CONSTRUCTION INDUSTRY - PRACTICE - REQUEST FOR HEARING - RESPONDENT ALLEGES INCREASE IN THE NUMBER OF EMPLOYEES IN THE BARGAINING UNIT FOR WHICH THE APPLICANT IS SEEKING CERTIFICATION - S108(1) - BOARD REFERS MATTER TO REGISTRAR.	
UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL UNION 249 KINGSTON ONTARIO v. J. G. FITZPATRICK CONSTRUCTION LIMITED.....	377
EMPLOYEE - PRACTICE - BARGAINING UNIT - WHETHER EMPLOYEE A MEMBER OF THE APPROPRIATE BARGAINING UNIT - EFFECT OF BEING EMPLOYED INCIDENTALLY IN BARGAINING UNIT WORK - WHETHER AN INTERESTED PARTY TO THE PROCEEDINGS.	
INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796 v. MARBON DIVISION, BORG-WARNER (CANADA) LIMITED v. EMPLOYEE.....	360
EMPLOYEES - INDEPENDENT CONTRACTOR - TRUCK-DRIVERS - OWNER- OPERATOR - WHETHER EMPLOYEES FOR PURPOSES OF THE ACT - CRITERIA BOARD APPLIES.	
GENERAL TRUCK DRIVERS UNION, TEAMSTERS LOCAL UNION NO. 938 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA v. ERB TRANSPORT LIMITED.....	388
EVIDENCE - S79 - WHETHER <u>PRIMA FACIE</u> CASE - INITIAL ONUS - EFFECT OF FAILURE OF RESPONDENT TO CALL EVIDENCE - WHETHER ONUS SATISFIED.	
INTERNATIONAL WOODWORKERS OF AMERICA v. EMPIRE BENTWOOD INDUSTRIES LIMITED.....	362
FAIR REPRESENTATION - JURISDICTION - CONSTITUTIONAL LAW - PRACTICE - WHETHER BOARD HAS JURISDICTION TO PROCESS COMPLAINT - WHETHER <u>PRIMA FACIE</u> CASE - APPLICATION OF S46 OF THE BOARD'S RULES OF PROCEDURE.	

MURRAY GETTY v. THE CANADIAN PACIFIC RAILWAYS AND
BROTHERHOOD RAILWAY CARMEN OF THE UNITED STATES
AND CANADA, LOCAL 855..... 287

FAIR REPRESENTATION - JURISDICTION - CONSTITUTIONAL LAW -
BRITISH NORTH AMERICA ACT (1867) 30-31 VICT C3
S92(10)(A) - THE CANADA LABOUR CODE R.S.C. 1970
CL-1 S2(B) - INTERPRETATION - WHETHER THE BOARD
SHOULD ASSERT JURISDICTION TO HEAR A COMPLAINT
UNDER S79 - WHETHER COMPLAINT AGAINST A TRADE
UNION ALLEGING VIOLATION OF S60 IS SEVERABLE -
WHETHER A MATTER OF PROPERTY AND CIVIL RIGHTS.

WILLIAM CAMPBELL v. INTER-CITY TRUCK LINES LIMITED,
AND TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS
OF AMERICA, LOCAL UNION 880..... 385

FAIR REPRESENTATION - PRACTICE - S79 - NATURE OF S79 -
PROCEDURAL AND NOT SUBSTANTIVE - EFFECT OF FAILURE
TO ALLEGE VIOLATION OF A SUBSTANTIVE PROVISION - S60 -
WHETHER AN APPROPRIATE PROVISION ALLEGED TO HAVE BEEN
VIOLATED - WHETHER A PRIMA FACIE CASE.

MAX MORAZE v. FORD OF CANADA - MRS. AUDREY JOHNSON..... 387

FAIR REPRESENTATION - S79 - JURISDICTION - S60 - NATURE
OF AMENDMENT SUBSTANTIVE AND NOT PROCEDURAL -
WHETHER RETROSPECTIVE EFFECT - WHETHER TRADE UNION
MAY BE IN VIOLATION OF S60 PERTAINING TO REPRESENTA-
TION OF MEMBER BEFORE WORKMAN'S COMPENSATION BOARD
- WHETHER TRADE UNION IN VIOLATION OF S60 FOR FAILING
TO FILE A GRIEVANCE - CASE RELISTED FOR HEARING.

PERCY WOODS v. LOCAL 4912 OF THE UNITED STEELS
WORKERS..... 353

FAIR REPRESENTATION - S79 - PRACTICE - FAILURE OF
RESPONDENT TO FULFILL TERMS OF SETTLEMENT -
WHETHER FIELD OFFICER'S REPORT DISCLOSED - S60
- WHETHER LISTING MATTER FOR HEARING WOULD SERVE
A USEFUL PURPOSE.

THOMAS J. BERRY v. CIVIL SERVICE OF ONTARIO, INC..... 350

FAIR REPRESENTATION - S79 - S60 - MERGER OF TWO COMPANIES -
"DOVETAILING" OF SENIORITY LISTS - REFUSAL TO GRIEVE
- WHETHER TRADE UNION ACTED IN A MANNER THAT WAS AR-
BITRARY DISCRIMINATORY OR IN BAD FAITH.

DENNIS H. O'KEEFE LEDGER NO. 64300 TEAMSTERS CHAUFFEURS WAREHOUSE & HELPERS LOCAL UNION 880 WINDSOR ONT. v. TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS UNION, LOCAL 880, WILFRED P. MAY, PRESIDENT, RYANCRETE STERLING PRODUCTS, WINDSOR, ONTARIO, A DIVISION OF LAKE ONTARIO CEMENT LIMITED, TORONTO, ONTARIO.....

298

FINANCIAL STATEMENT - S76 - JURISDICTION - PRACTICE - FAILURE TO NAME A PERSON AS A PARTY RESPONDENT TO THE PROCEEDINGS-POWERS OF THE BOARD PURSUANT TO A S76 COMPLAINT - WHETHER TRADE UNION HAS FAILED TO FURNISH FINANCIAL STATEMENT - WHETHER COMPLAINT IS PREMATURE.

VICTOR A. D. DANIELS v. SHEET METAL WORKERS INTERNATIONAL ASSOCIATION.....

288

JURISDICTION - CONSTITUTIONAL LAW - PRACTICE - FAIR REPRESENTATION - WHETHER BOARD HAS JURISDICTION TO PROCESS COMPLAINT - WHETHER PRIMA FACIE CASE - APPLICATION OF S46 OF THE BOARD'S RULES OF PROCEDURE.

MURRAY GETTY v. THE CANADIAN PACIFIC RAILWAYS AND BROTHERHOOD RAILWAY CARMEN OF THE UNITED STATES AND CANADA, LOCAL 855.....

287

JURISDICTION - CONSTITUTIONAL LAW - FAIR REPRESENTATION - BRITISH NORTH AMERICA ACT (1867) 30-31 VICT C3 S92(10)(A) - THE CANADA LABOUR CODE R.S.C. 1970 CL-1 S2(B) - INTERPRETATION - WHETHER THE BOARD SHOULD ASSERT JURISDICTION TO HEAR A COMPLAINT UNDER S79 - WHETHER COMPLAINT AGAINST A TRADE UNION ALLEGING VIOLATION OF S60 IS SEVERABLE - WHETHER A MATTER OF PROPERTY AND CIVIL RIGHTS.

WILLIAM CAMPBELL v. INTER-CITY TRUCK LINES LIMITED, AND TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, LOCAL UNION 880.....

385

JURISDICTION - FAIR REPRESENTATION - S79 - S60 - NATURE OF AMENDMENT SUBSTANTIVE AND NOT PROCEDURAL - WHETHER RETROSPECTIVE EFFECT - WHETHER TRADE UNION MAY BE IN VIOLATION OF S60 PERTAINING TO REPRESENTATION OF MEMBER BEFORE WORKMAN'S COMPENSATION BOARD - WHETHER TRADE UNION IN VIOLATION OF S60 FOR FAILING TO FILE A GRIEVANCE - CASE RELISTED FOR HEARING.

PERCY WOODS v. LOCAL 4912 OF THE UNITED STEELS WORKERS.....

353

JURISDICTION - PRACTICE - FINANCIAL STATEMENT - S76 - FAILURE TO NAME A PERSON AS A PARTY RESPONDENT TO THE PROCEEDINGS-POWERS OF THE BOARD PURSUANT TO A S76 COMPLAINT - WHETHER TRADE UNION HAS FAILED TO FURNISH FINANCIAL STATEMENT - WHETHER COMPLAINT IS PREMATURE.	
VICTOR A. D. DANIELS v. SHEET METAL WORKERS INTER- NATIONAL ASSOCIATION.....	288
JURISDICTION - S79 - WHETHER BOARD HAS JURISDICTION TO SIT ON APPEAL OF DECISIONS OF ANOTHER FORUM - WHETHER GRIEVOR HAS ALLEGED A FORM OF "DISCRIMINATION" WHICH IS CONTRARY TO A SPECIFIC PROVISION OF THE O.L.R.A.	
PERCY WOODS v. NAPANEE INDUSTRIES.....	356
JURISDICTIONAL DISPUTE - S81 - WORK INVOLVED IN CONNECTION WITH THE "FILM ON ACETATE" PROCESS IN RESPONDENT'S UNDERTAKING - WHETHER WORK ASSIGNED TO COMPLAINANT.	
TORONTO TYPOGRAPHICAL UNION NO. 91, I.T.U. v. SOUTHAM- MURRAY, A DIVISION OF SOUTHAM PRINTING COMPANY LIMITED AND TORONTO PHOTO ENGRAVERS UNION, LOCAL 35, P.L.P.I.U....	348
MEMBERSHIP - EVIDENCE - WHETHER DOLLAR PAID - CONTRADIC- TORY TESTIMONY - ISSUE DETERMINED ON CREDIBILITY OF WITNESS.	
UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL 2486 v. DESOURDY CONSTRUCTION LIMITED v. EMPLOYEE.....	371
PETITION - BARGAINING RIGHTS - TRADE UNION - REPRESENTATION VOTE - PERSONS EMPLOYED IN A MANAGERIAL CAPACITY HOLD EXECUTIVE OFFICE IN AN ASSOCIATION - S40 - WHETHER AGREEMENT NEGOTIATED WITH EMPLOYER BY ASSOCIATION VALID - S12 - WHETHER ASSOCIATION EN- TITLED TO PARTICIPATE IN A REPRESENTATION VOTE - WHETHER CONFERRED STATUS OF A CERTIFIABLE ORGANIZA- TION - PRESENCE OF MANAGERIAL PERSONS AT A MEETING OF EMPLOYEES - UNDUE INFLUENCE - WHETHER PETITION VOLUNTARILY REFLECTS THE WISHES OF EMPLOYEES.	

TEXTILE WORKERS UNION OF AMERICA, AFL-CIO-CLC v. FEDERAL PACKAGING AND PARTITION COMPANY LIMITED v. FEDERAL PACKAGING EMPLOYEES ASSOCIATION v. GROUP OF EMPLOYEES.....	316
PETITION - WHETHER RELEVANT WHERE APPLICANT PROCEEDS BY WAY OF REQUESTING A PRE-HEARING REPRESENTATION VOTE.	
INTERNATIONAL WOODWORKERS OF AMERICA v. TEXTURON YARNS LIMITED.....	305
PRACTICE - ADJOURNMENT - TO GRANT REQUEST FOR ADJOURNMENT WHEN MADE WITH CONSENT OF ALL PARTIES OR WHERE REASON FOR THE ADJOURNMENT IS BEYOND THE CONTROL OF THE PARTY MAKING THE REQUEST - WHERE COUNSEL HAS DUE NOTICE OF BOARD HEARING - EFFECT OF ANOTHER COMMITMENT - WHETHER BOARD WILL GRANT REQUEST - WHETHER FULL OPPORTUNITY TO PRESENT EVIDENCE.	
SERVICE EMPLOYEES UNION, LOCAL 532 v. ST. ELIZABETH NURSING HOME AND SERVICE EMPLOYEES UNION, LOCAL 532 v. ST. ELIZABETH NURSING HOME.....	378
PRACTICE - BARGAINING UNIT - EMPLOYEE - WHETHER EMPLOYEE A MEMBER OF THE APPROPRIATE BARGAINING UNIT - EFFECT OF BEING EMPLOYED INCIDENTALLY IN BARGAINING UNIT WORK - WHETHER AN INTERESTED PARTY TO THE PROCEEDINGS.	
INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796 v. MARBON DIVISION, BORG-WARNER (CANADA) LIMITED v. EMPLOYEE.....	360
PRACTICE - CONSTRUCTION INDUSTRY - CHARGES - STATUS TO INTERVENE - WHETHER A PARTY MAY ADDUCE EVIDENCE IN THE ROLE OF "AMICUS TRIBUNAE" - WHETHER PARTY RE- PRESENTS EMPLOYEES AFFECTED BY THE APPLICATION - S47 OF BOARD'S RULES - WHETHER A PARTY MAY MAKE CHARGES OF BEHALF OF A PERSON DEPRIVED OF STATUS TO PARTICI- PATE IN THE PROCEEDINGS.	
LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 v. SUNRISE PAVING & CONSTRUCTION CO. LTD. v. OPERATIVE PLASTERERS' AND CEMENT MASONS' INTER- NATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, LOCAL UNION 172.....	313

PRACTICE - CONSTRUCTION INDUSTRY - REQUEST FOR HEARING -
RESPONDENT ALLEGES INCREASE IN THE NUMBER OF EM-
PLOYEES IN THE BARGAINING UNIT FOR WHICH THE APPLI-
CANT IS SEEKING CERTIFICATION - S108(1) - BOARD
REFERS MATTER TO REGISTRAR.

UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA
LOCAL UNION 249 KINGSTON ONTARIO v. J. G. FITZPATRICK
CONSTRUCTION LIMITED.....

377

PRACTICE - EXAMINERS HEARING - WHETHER BOARD WILL ADMIT
WRITTEN STATEMENT MADE BY RESPONDENT WITNESS AFTER
EXAMINER'S HEARING - WHETHER IF ADMITTED, APPLICANT
ENTITLED TO CROSS-EXAMINE - BOARD DIRECTED REGISTRAR
TO LIST FOR HEARING.

ONTARIO HOUSING CORPORATION EMPLOYEES LOCAL 767,
CANADIAN UNION OF PUBLIC EMPLOYEES v. DEL ZOTTO
PROPERTY MANAGEMENT.....

375

PRACTICE - FAIR REPRESENTATION - JURISDICTION - CONSTI-
TUTIONAL LAW - WHETHER BOARD HAS JURISDICTION TO
PROCESS COMPLAINT - WHETHER PRIMA FACIE CASE - APPLI-
CATION OF S46 OF THE BOARD'S RULES OF PROCEDURE.

MURRAY GETTY v. THE CANADIAN PACIFIC RAILWAYS AND
BROTHERHOOD RAILWAY CARMEN OF THE UNITED STATES AND
CANADA, LOCAL 855.....

287

PRACTICE - FAIR REPRESENTATION - S79 - FAILURE OF RESPON-
DENT TO FULFILL TERMS OF SETTLEMENT - WHETHER FIELD
OFFICER'S REPORT DISCLOSED - S60 - WHETHER LISTING
MATTER FOR HEARING WOULD SERVE A USEFUL PURPOSE.

THOMAS J. BERRY v. CIVIL SERVICE OF ONTARIO, INC.....

350

PRACTICE - FINANCIAL STATEMENT - S76 - JURISDICTION -
FAILURE TO NAME A PERSON AS A PARTY RESPONDENT
TO THE PROCEEDINGS-POWERS OF THE BOARD PURSUANT
TO A S76 COMPLAINT - WHETHER TRADE UNION HAS FAILED
TO FURNISH FINANCIAL STATEMENT - WHETHER COMPLAINT
IS PREMATURE.

VICTOR A. D. DANIELS v. SHEET METAL WORKERS INTER-
NATIONAL ASSOCIATION.....

288

PRACTICE - RECONSIDERATION - WHETHER A PARTY TO INITIAL BOARD DECISION - WHETHER IT WILL SERVE A USEFUL PURPOSE TO DELETE PORTION OF INITIAL DECISION - NATURE OF BOARD REMARK EXPLAINED.

THEODORE HOGETERP v. INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW), LOCAL 222 v. GENERAL MOTORS OF CANADA LIMITED.....

348

PRACTICE - REPRESENTATION VOTE - S8(2) - PRE-HEARING - WHETHER MEMBERSHIP EVIDENCE ON OR BEFORE DATE OF APPLICATION - EFFECT OF FILING MEMBERSHIP EVIDENCE SUBSEQUENT TO DATE OF APPLICATION - S46 OF BOARD'S RULES - WHETHER A PRIMA FACIE CASE.

CANADIAN UNION OF GENERAL EMPLOYEES (C.U.G.E.) v. TEMPLETON SUR-LOK LIMITED v. TEXTILE WORKERS UNION OF AMERICA, CLC, AFL-CIO.....

312

PRACTICE - S79 - FAIR REPRESENTATION - NATURE OF S79 - PROCEDURAL AND NOT SUBSTANTIVE - EFFECT OF FAILURE TO ALLEGE VIOLATION OF A SUBSTANTIVE PROVISION -S60 - WHETHER AN APPROPRIATE PROVISION ALLEGED TO HAVE BEEN VIOLATED - WHETHER A PRIMA FACIE CASE.

MAX MORAZE v. FORD OF CANADA - MRS. AUDREY JOHNSON.....

387

PRACTICE - STATUS - WHETHER BOARD WILL ENTERTAIN MOTION OF A PERSON HERETOFORE DETERMINED NOT TO BE A PROPER PARTY - S48 OF BOARD RULES - FAILURE OF EMPLOYEES CONCERNED TO COMPLY WITH PROVISIONS - WHETHER BOARD SHOULD DRAW INFERENCE THAT EMPLOYEES INDICATE AN OPPOSITION TO SELECTION OF A PARTICULAR TRADE UNION REPRESENTATIVE - WHETHER IN THE CIRCUMSTANCES AN ORGANIZATION SHOULD BE DEEMED AN AGENT OF THE EMPLOYEES AFFECTED.

LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 v. SIVI CONSTRUCTION LIMITED v. OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, LOCAL UNION 172.....

367

PRACTICE - TERMINATION - S49(1) - WHETHER APPLICATION TIMELY - BOARD PRACTICE WHERE PROVISION OF THE ACT APPLICANT RELIES UPON IS MISCONCEIVED - WHETHER APPLICATION MAY BE ENTERTAINED UNDER AN APPROPRIATE PROVISION OF THE ACT.

XIII

CLAIRE DUBEAU v. CANADIAN UNION OF GENERAL EMPLOYEES v. TEKPAK AUTOMATED SYSTEMS LIMITED.....	376
RELIGIOUS OBJECTION - S39(1) - WHETHER ON THE MERITS APPLICANT ENTITLED TO THE RELIEF REQUESTED.	
APPI SIKKEMA v. CANADIAN UNION OF PUBLIC EMPLOYEES LOCAL 1217 v. COLLINGWOOD PUBLIC UTILITIES COMMIS- SION.....	289
RELIGIOUS OBJECTION - S39(2)(B) - WHERE EMPLOYMENT STATUS COMMENCES AFTER FEBRUARY 15, 1971 - EFFECT OF HAVING BEEN EMPLOYED PRIOR TO FEB. 15, 1971 BUT EMPLOYMENT STATUS TERMINATED - WHETHER APPLICATION FOR RELIEF TIMELY.	
CATHERINE GRACE HORNEMAN (MISS) v. SERVICE EMPLOYEES' UNION, LOCAL 210 v. PUBLIC GENERAL HOSPITAL SOCIETY OF CHATHAM.....	369
REPRESENTATION VOTE - BARGAINING UNIT - WHETHER APPLICANT CAN REPRESENT STATIONARY ENGINEERS UNDER S6(2) - EFFECT OF S6(1) - WHETHER CAN REPRESENT STATIONARY ENGINEERS AS PART OF ON ALL EMPLOYEE UNIT.	
INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) v. THE PRESTOLITE COMPANY, DIVISION OF ELTRA OF CANADA LIMITED v. CANADIAN UNION OF OPERATING ENGINEERS.....	359
REPRESENTATION VOTE - PETITION - BARGAINING RIGHTS - TRADE UNION - PERSONS EMPLOYED IN A MANAGERIAL CAPACITY HOLD EXECUTIVE OFFICE IN AN ASSOCIATION - S40 - WHETHER AGREEMENT NEGOTIATED WITH EMPLOYER BY ASSOCIATION VALID - S12 - WHETHER ASSOCIATION EN- TITLED TO PARTICIPATE IN A REPRESENTATION VOTE - WHETHER CONFERRED STATUS OF A CERTIFIABLE ORGANIZA- TION - PRESENCE OF MANAGERIAL PERSONS AT A MEETING OF EMPLOYEES - UNDUE INFLUENCE - WHETHER PETITION VOLUNTARILY REFLECTS THE WISHES OF EMPLOYEES.	
TEXTILE WORKERS UNION OF AMERICA, AFL-CIO-CLC v. FEDERAL PACKAGING AND PARTITION COMPANY LIMITED v. FEDERAL PACKAGING EMPLOYEES ASSOCIATION v. GROUP OF EMPLOYEES.....	316

REPRESENTATION VOTE - PRACTICE - S8(2) - PRE-HEARING - WHETHER MEMBERSHIP EVIDENCE FILED ON OR BEFORE DATE OF APPLICATION - EFFECT OF FILING MEMBERSHIP EVIDENCE SUBSEQUENT TO DATE OF APPLICATION - S46 OF BOARD'S RULES - WHETHER A <u>PRIMA FACIE</u> CASE.	
CANADIAN UNION OF GENERAL EMPLOYEES (C.U.G.E.) v. TEMPLETON SUR-LOK LIMITED v. TEXTILE WORKERS UNION OF AMERICA, CLC, AFL-CIO.....	312
REPRESENTATION VOTE - S92(5) - RUN-OFF VOTE - WHETHER BOARD WILL ACCEDE TO REQUEST TO DISMISS APPLICATION WHERE NO TRADE UNION ON FIRST BALLOT RECEIVED MORE THAN 50% OF THE BALLOTS CAST - BOARD DIRECTION WITH- OUT PREJUDICE TO RESPONDENT'S POSITION.	
INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) v. NORTHERN ELECTRIC COMPANY LIMITED v. CANADIAN UNION OF COMMUNICATION WORKERS v. UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE).....	366
SALE OF A BUSINESS - S55(2) - INTENT AND PURPOSE OF SUBSEC- TION - TO PRESERVE EXISTING BARGAINING RIGHTS AND NOT TO INCREASE RIGHTS NOT PREVIOUSLY HELD - INTERMINGLING OF EMPLOYEES - S55(6) - WHETHER BOARD WILL ORDER A VOTE - WHETHER DELAY IN LAUNCHING APPLICATION - WHETHER TO THE PREJUDICE OF A PARTY.	
THE BRYANT PRESS LIMITED v. TORONTO TYPOGRAPHICAL UNION NO. 91, ITU v. GROUP OF EMPLOYEES.....	301
S76 - JURISDICTION - PRACTICE - FINANCIAL STATEMENT - FAILURE TO NAME A PERSON AS A PARTY RESPONDENT TO THE PROCEEDINGS - POWERS OF THE BOARD PURSUANT TO A S76 COMPLAINT - WHETH- ER TRADE UNION HAS FAILED TO FURNISH FINANCIAL STATEMENT - WHETHER COMPLAINT IS PREMATURE.	
VICTOR A. D. DANIELS v. SHEET METAL WORKERS INTERNATION- AL ASSOCIATION.....	288
S79 - DISCHARGE - S58 - S61 - WHETHER FOR UNION ACTIVITY - KNOWLEDGE ESTABLISHED BY EMPLOYER OF GRIEVOR'S ACTIVITIES - WHETHER <u>PRIMA FACIE</u> CASE ESTABLISHED - WHETHER GRIEVOR HAS SATISFIED ONUS.	
CANADIAN UNION OF PUBLIC EMPLOYEES v. CORPORATION OF THE TOWN OF THOROLD.....	383

- S79 - EVIDENCE - WHETHER PRIMA FACIE CASE - INITIAL ONUS - EFFECT OF FAILURE OF RESPONDENT TO CALL EVIDENCE - WHETHER ONUS SATISFIED.
- INTERNATIONAL WOODWORKERS OF AMERICA v. EMPIRE BENTWOOD INDUSTRIES LIMITED..... 362
- S79 - FAIR REPRESENTATION - PRACTICE - NATURE OF S79 - PROCEDURAL AND NOT SUBSTANTIVE - EFFECT OF FAILURE TO ALLEGE VIOLATION OF A SUBSTANTIVE PROVISION - S60 - WHETHER AN APPROPRIATE PROVISION ALLEGED TO HAVE BEEN VIOLATED - WHETHER A PRIMA FACIE CASE.
- MAX MORAZE v. FORD OF CANADA - MRS. AUDREY JOHNSON..... 387
- S79 - FAIR REPRESENTATION - S60 - MERGER OF TWO COMPANIES - "DOVETAILING" OF SENIORITY LISTS - REFUSAL TO GRIEVE - WHETHER TRADE UNION ACTED IN A MANNER THAT WAS ARBITRARY DISCRIMINATORY OR IN BAD FAITH.
- DENNIS H. O'KEEFE LEDGER NO. 64300 TEAMSTERS CHAUFFEURS WAREHOUSE & HELPERS LOCAL UNION 880 WINDSOR ONT. v. TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS UNION, LOCAL 880, WILFRED P. MAY, PRESIDENT, RYANCRETE-STERLING PRODUCTS, WINDSOR, ONTARIO, A DIVISION OF LAKE ONTARIO CEMENT LIMITED, TORONTO, ONTARIO..... 298
- S79 - JURISDICTION - FAIR REPRESENTATION - S60 - NATURE - OF AMENDMENT SUBSTANTIVE AND NOT PROCEDURAL - WHETHER RETROSPECTIVE EFFECT - WHETHER TRADE UNION MAY BE IN VIOLATION OF S60 PERTAINING TO REPRESENTATION OF MEMBER BEFORE WORKMAN'S COMPENSATION BOARD - WHETHER TRADE UNION IN VIOLATION OF S60 FOR FAILING TO FILE A GRIEVANCE - CASE RELISTED FOR HEARING.
- PERCY WOODS v. LOCAL 4912 OF THE UNITED STEELS WORKERS..... 353
- S79 - JURISDICTION - WHETHER BOARD HAS JURISDICTION TO SIT ON APPEAL OF DECISION OF ANOTHER FORUM - WHETHER GRIEVOR HAS ALLEGED A FORM OF "DISCRIMINATION" WHICH IS CONTRARY TO A SPECIFIC PROVISION OF THE O.L.R.A.
- PERCY WOODS v. NAPANEE INDUSTRIES..... 356

S79 - PRACTICE - FAIR REPRESENTATION - FAILURE OF RESPONDENT TO FULFILL TERMS OF SETTLEMENT - WHETHER FIELD OFFICER'S REPORT DISCLOSED - S60 - WHETHER LISTING MATTER FOR HEARING WOULD SERVE A USEFUL PURPOSE.	
THOMAS J. BERRY v. CIVIL SERVICE OF ONTARIO, INC.....	350
S79 - WHETHER DISCHARGE FOR UNION ACTIVITY - WHETHER GRIEVOR ENGAGED IN INTIMIDATORY TACTICS DURING ORGANIZATIONAL CAMPAIGN - EFFECT OF WARNING GIVEN BY RESPONDENT - DETERMINING THE REAL REASON FOR DISCHARGE.	
CANADIAN UNION OF OPERATING ENGINEERS - LOCAL 101 v. 400 UNIVERSITY AVENUE PROSPECT COMPANY.....	373
TERMINATION - PRACTICE - S49(1) - WHETHER APPLICATION TIMELY - BOARD PRACTICE WHERE PROVISION OF THE ACT APPLICANT RELIES UPON IS MISCONCEIVED - WHETHER APPLICATION MAY BE ENTERTAINED UNDER AN APPROPRIATE PROVISION OF THE ACT.	
CLAIRE DUBEAU v. CANADIAN UNION OF GENERAL EMPLOYEES v. TEKPAK AUTOMATED SYSTEMS LIMITED.....	376
TRADE UNION - REPRESENTATION VOTE - PETITION - BARGAINING RIGHTS - PERSONS EMPLOYED IN A MANAGERIAL CAPACITY HOLD EXECUTIVE OFFICE IN AN ASSOCIATION - S40 - WHETHER AGREEMENT NEGOTIATED WITH EMPLOYER BY ASSOCIATION VALID - S12 - WHETHER ASSOCIATION ENTITLED TO PARTICIPATE IN A REPRESENTATION VOTE - WHETHER CONFERRED STATUS OF A CERTIFIABLE ORGANIZATION - PRESENCE OF MANAGERIAL PERSONS AT A MEETING OF EMPLOYEES - UNDUE INFLUENCE - WHETHER PETITION VOLUNTARILY REFLECTS THE WISHES OF EMPLOYEES.	
TEXTILE WORKERS UNION OF AMERICA, AFL-CIO-CLC v. FEDERAL PACKAGING AND PARTITION COMPANY LIMITED v. FEDERAL PACKAGING EMPLOYEES ASSOCIATION v. GROUP OF EMPLOYEES.....	316

DUES DEDUCTION AUTHORIZATION FORM, A BUFF CARD, THE WITNESS SAID "IT'S MY WRITING AT THE TOP AND THE SIGNATURES". SHOWN EXHIBIT 11, THE SECOND APPLICATION FOR MEMBERSHIP CARD, THE WITNESS SAID "MY WRITING ON THE FRONT". SHOWN EXHIBIT 10, HER 1964 LETTER OF RESIGNATION, WITH THE DATE SCRATCHED OUT AND RE-WRITTEN, SHE SAID "MINE" WHEN ASKED WHOSE WRITING IT WAS.

8. THE APPLICANT MIEDEMA TESTIFIED THAT HER VOLUNTARY ORIGINAL SIGNING PRECEDED THE C.L.A.C. "THERE WAS NO C.L.A.C. WHEN I SIGNED". HER LETTER OF JUNE 4TH, 1964, RESIGNING FROM THE UNION WAS ACCEPTED BY THE UNION. THE LOCAL RESPECTED THE "PERSONAL AND RELIGIOUS" REASONS OF THE APPLICANT. CONSIDERING ALL OF THE EVIDENCE, AND IN THE PARTICULAR CIRCUMSTANCES OF THIS CASE, I FIND GRACE MIEDEMA TO HAVE A RELIGIOUS CONVICTION OR BELIEF THAT ENTITLES HER TO EXEMPTION FROM UNION MEMBERSHIP AND DUES DEDUCTIONS UNDER THE PROVISIONS OF S.39.

9. WITH RESPECT TO MY CONCURRING DECISION IN THE MATTER OF TIME-LINESS, I NOTE THAT THE LANGUAGE "DURING THE LIFE OF SUCH COLLECTIVE AGREEMENT" APPEARING IN S.39(2) (A) AND (B) OCCURS NOWHERE ELSE IN THE ACT. I UNDERSTAND THESE WORDS NOT TO HAVE, IN THE CIRCUMSTANCES OF THIS CASE, A LIKE MEANING TO "CONTINUES TO OPERATE" WHEN REFERRING TO THE TERM OF A COLLECTIVE AGREEMENT AS USED ELSEWHERE IN THE ACT, NOR TO HAVE A MEANING OPPOSITE TO "NO COLLECTIVE AGREEMENT IS IN OPERATION", AS IT APPEARS IN S.10 OF THE HOSPITAL DISPUTES ARBITRATION ACT AND IN S.70 OF THE LABOUR RELATIONS ACT.

1768-71-U: MURRAY GETTY (COMPLAINANT) v. THE CANADIAN PACIFIC RAILWAYS AND BROTHERHOOD RAILWAY CARMEN OF THE UNITED STATES AND CANADA, LOCAL 855 (RESPONDENTS).

BEFORE: G. W. REED, Q.C., CHAIRMAN, AND BOARD MEMBERS E. BOYER AND H.J.F. ADE.

DECISION OF THE BOARD: APRIL 4, 1972.

1. THIS IS A COMPLAINT UNDER SECTION 79 OF THE LABOUR RELATIONS ACT IN WHICH THE COMPLAINANT ALLEGES THAT HE HAS BEEN DEALT WITH CONTRARY TO THE PROVISIONS OF SECTION 60 OF THE ACT.

2. IT WOULD APPEAR FROM THE MATERIALS FILED THAT THE GRIEVOR WAS COVERED BY A COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT TRADE UNION AND THE RESPONDENT EMPLOYER. HE LODGED A GRIEVANCE UNDER THE PROVISIONS OF THE COLLECTIVE AGREEMENT WITH RESPECT TO HIS DISMISSAL FROM EMPLOYMENT. THE MANNER IN WHICH THE RESPONDENTS RESOLVED THE GRIEVANCE WAS NOT TO THE GRIEVOR'S SATISFACTION, THUS GIVING RISE TO THE LAUNCHING OF THIS COMPLAINT.

3. HAVING REGARD TO THE BRITISH NORTH AMERICA ACT (1867) 30-31 VICT., c. 3 s. 92(10)(A) AND THE CANADA LABOUR CODE, R.S.C. 1970 c. L.-1 s. 2(B), THE BOARD FINDS THAT IT IS WITHOUT JURISDICTION TO DEAL WITH THIS COMPLAINT. [SEE C.P.R. V. ATTORNEY GENERAL OF BRITISH COLUMBIA [1950] A.C. 122 (P.C.); THE QUEEN IN RIGHT OF ONTARIO V. THE BOARD OF TRANSPORT COMMISSIONERS [1968] 65 D.L.R. (2D) 425 (SCC)].

4. HAVING REGARD TO SECTION 46 OF THE BOARD'S RULES OF PROCEDURE, THE COMPLAINT IN OUR OPINION DOES NOT MAKE OUT A PRIMA FACIE CASE FOR THE REMEDY REQUESTED AND IT IS THEREFORE DISMISSED.

1667-71-M: VICTOR A. D. DANIELS (COMPLAINANT) V. SHEET METAL WORKERS INTERNATIONAL ASSOCIATION (RESPONDENT).

BEFORE: G. W. REED, Q.C., CHAIRMAN, AND BOARD MEMBERS E. BOYER AND H.J.F. ADE.

DECISION OF THE BOARD: APRIL 4, 1972.

1. THIS IS A COMPLAINT UNDER SECTION 76 OF THE LABOUR RELATIONS ACT CONCERNING A FINANCIAL STATEMENT. THE RESPONDENT NAMED IN THE COMPLAINT IS THE SHEET METAL WORKERS INTERNATIONAL ASSOCIATION. THE COMPLAINANT IS A MEMBER OF LOCAL 540 OF THAT ASSOCIATION. WHILE THE COMPLAINANT APPEARS TO HAVE A COMPLAINT AGAINST THE SAID LOCAL AND, INDEED, SOME REFERENCE IS MADE THERETO IN THE BODY OF THE COMPLAINT, ONLY THE INTERNATIONAL ASSOCIATION WAS SERVED WITH A COPY OF THE COMPLAINT. IN VIEW OF THE FACT THAT LOCAL 540 WAS NOT NAMED AS A RESPONDENT AND, ACCORDINGLY, WAS NOT SERVED WITH A COPY OF THE COMPLAINT, WE DO NOT PROPOSE TO DEAL FURTHER WITH THIS ASPECT OF THE PROCEEDINGS.

2. IN ANY EVENT, IT WOULD APPEAR FROM SUBSEQUENT CORRESPONDENCE THAT THE COMPLAINANT HAS NOW RECEIVED THE LOCAL'S QUARTERLY STATEMENTS. WHILE HE IS DISSATISFIED WITH THE CONTENTS OF THE STATEMENTS, THIS IS NOT A MATTER OVER WHICH THE BOARD HAS JURISDICTION. UNDER SECTION 76 THE BOARD'S POWER IS LIMITED TO DEALING WITH THE FAILURE OF A UNION TO PROVIDE AN AUDITED FINANCIAL STATEMENT FOR ITS LAST FISCAL YEAR DULY CERTIFIED TO BE A TRUE COPY BY THE TREASURER OR OTHER RESPONSIBLE OFFICER. THE BOARD HAS NO JURISDICTION TO DEAL WITH THE STATEMENTS WHICH THE COMPLAINANT FINDS TO BE UNSATISFACTORY. REFERENCE IS MADE TO J. R. CANVIN CASE, OLRB M.R. FEB. 1968, P. 1113, IN WHICH THE BOARD STATED:

QUITE CLEARLY, THE ONLY POWER THE BOARD HAS UNDER THIS SECTION IS TO DIRECT A TRADE UNION TO FILE A COPY OF THE AUDITED FINANCIAL STATEMENT OF ITS AFFAIRS WITH THE REGISTRAR OF THE BOARD AND TO

FURNISH A COPY OF SUCH STATEMENT TO SUCH MEMBERS OF THE TRADE UNION AS THE BOARD DIRECTS AND THE CONDITION PRECEDENT TO THE EXERCISE OF THIS POWER IS THAT THE TRADE UNION HAS FAILED TO FURNISH A FINANCIAL STATEMENT ON REQUEST TO A MEMBER. IT IS CLEAR THAT THE CONDITION PRECEDENT DOES NOT EXIST IN THIS CASE BECAUSE THE COMPLAINANT ACKNOWLEDGES THAT HE HAS RECEIVED AN AUDITED FINANCIAL STATEMENT, FURNISHED HIM ON HIS REQUEST. IN OUR VIEW, THE BOARD HAS NO POWER TO INQUIRE INTO THE ACCURACY OR OTHERWISE OF ANY AUDITED FINANCIAL STATEMENT OF A TRADE UNION.

3. IN SO FAR AS THE COMPLAINT RELATES TO THE INTERNATIONAL ASSOCIATION, THE COMPLAINT APPEARS TO BE PREMATURE. THE RESPONDENT HAS INFORMED THE BOARD THAT ITS LAST AUDIT HAS NOT YET BEEN COMPLETED BUT THAT WHEN IT IS A COPY WILL NO DOUBT BE FORWARDED TO THE COMPLAINANT THROUGH THE USUAL CHANNELS, I.E., THE LOCAL UNION. THE COMPLAINANT IS NOT SATISFIED WITH THIS AND WISHES THE BOARD TO DIRECT THE INTERNATIONAL ASSOCIATION TO FILE A COPY WITH THE BOARD. WE HAVE NO JURISDICTION TO DO SO UNLESS IT HAS BEEN SHOWN THAT THE TRADE UNION HAS FAILED TO FURNISH SUCH A STATEMENT TO HIM. THERE IS NO EVIDENCE BEFORE THE BOARD THAT THERE HAS BEEN ANY SUCH FAILURE BY THE RESPONDENT.

4. HAVING REGARD TO THE ABOVE CONSIDERATIONS, THIS MATTER IS ADJOURNED PENDING THE COMPLETION OF THE LAST AUDITED FINANCIAL STATEMENT OF THE RESPONDENT AND THE TIME REQUIRED FOR ITS DISTRIBUTION TO ITS MEMBERSHIP. SHOULD THE COMPLAINANT FAIL TO RECEIVE A COPY OF THE STATEMENT, HE MAY REOPEN THESE PROCEEDINGS.

5. FOR THE INFORMATION OF THE RESPONDENT TRADE UNION, IT IS POINTED OUT THAT UNDER SECTION 76 OF THE LABOUR RELATIONS ACT THE COMPLAINANT IS ENTITLED TO BE FURNISHED, WITHOUT CHARGE, WITH A COPY OF THE AUDITED FINANCIAL STATEMENT OF ITS AFFAIRS TO THE END OF ITS LAST FISCAL YEAR, CERTIFIED BY ITS TREASURER OR OTHER OFFICER RESPONSIBLE FOR THE HANDLING AND ADMINISTRATION OF ITS FUNDS TO BE A TRUE COPY.

1314-71-M: APPI SIKKEMA (APPLICANT) V. CANADIAN UNION OF PUBLIC EMPLOYEES LOCAL 1217 (RESPONDENT TRADE UNION) V. COLLINGWOOD PUBLIC UTILITIES COMMISSION (RESPONDENT EMPLOYER).

BEFORE: FRANK V. BOSCARIOL, VICE-CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND O. HODGES.

APPEARANCES AT THE HEARING: W. R. HERRIDGE, Q.C., FOR THE APPLICANT; MARIO HIKL AND TOM EDWARDS FOR THE RESPONDENT TRADE UNION; NO ONE APPEARING FOR THE RESPONDENT EMPLOYER.

DECISION OF VICE-CHAIRMAN FRANK V. BOSCARIOL AND BOARD MEMBER J. D. BELL:
APRIL 4, 1972.

1. THE NAME "THE CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL UNION No. 1217" APPEARING IN THE STYLE OF CAUSE OF THIS APPLICATION AS THE NAME OF THE RESPONDENT TRADE UNION IS AMENDED TO READ: "CANADIAN UNION OF PUBLIC EMPLOYEES LOCAL 1217."

2. THE APPLICANT APPI SIKKEMA HAS APPLIED TO THE BOARD PURSUANT TO SECTION 39 OF THE LABOUR RELATIONS ACT FOR EXEMPTION ON THE GROUNDS OF RELIGIOUS CONVICTION OR BELIEF FROM THE UNION SECURITY PROVISIONS IN A COLLECTIVE AGREEMENT ENTERED INTO BETWEEN THE RESPONDENT TRADE UNION AND THE RESPONDENT EMPLOYER.

3. THE EVIDENCE OF APPI SIKKEMA, DISCLOSES HE IS A MEMBER OF THE CHRISTIAN REFORMED CHURCH AND THAT AT THE AGE OF NINE YEARS, ALONG WITH HIS PARENTS, HE EMMIGRATED TO CANADA FROM THE NETHERLANDS. ALTHOUGH HE WAS EDUCATED IN A "CHRISTIAN" SCHOOL IN THE NETHERLANDS, HIS EDUCATION IN CANADA WAS IN THE PUBLIC AND SECONDARY SCHOOLS SINCE NO CHRISTIAN SCHOOLS WERE ESTABLISHED IN THE AREA AT THIS TIME. UPON COMPLETING GRADE 10 AT BRAMPTON HIGH SCHOOL, HE BEGAN EMPLOYMENT WITH A NON-UNIONIZED PAPER CUP MANUFACTURER. HE THEN BECAME EMPLOYED WITH THE BRAMPTON PUBLIC UTILITIES COMMISSION WHICH HAD A COLLECTIVE AGREEMENT WITH THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS. AS MEMBERSHIP IN THIS UNION WAS A REQUIREMENT FOR EMPLOYMENT, HE JOINED. HE ATTENDED SOME OF THE DISTRICT MEETINGS OF THIS UNION IN TORONTO ALTHOUGH HE REFUSED TO ATTEND MEMBERSHIP MEETINGS CONDUCTED ON SUNDAYS. THE WITNESS STATED THAT AT THE TIME OF JOINING THIS UNION, HE WAS STILL GROWING IN FAITH AND AS THIS FAITH BEGAN TO GROW, HE CAME TO REALIZE THAT THIS UNION WAS MAN-CENTERED AND NOT CHRIST-CENTERED. HE FURTHER STATED THAT AT ABOUT THIS PERIOD IN 1965 HIS WIFE ALSO BEGAN TO EXPERIENCE PROBLEMS WITH A UNION UPON ITS ADVENT INTO NORTHERN ELECTRIC, HER EMPLOYER. WITH THIS IN MIND AND AS THERE WAS NO CLAUSE IN THE COLLECTIVE AGREEMENT PERMITTING HIM TO OPT OUT OF THE UNION, THE WITNESS STATED THAT IT WAS DECIDED TO QUIT HIS EMPLOYMENT. HE THEN MOVED HIS FAMILY TO STAYNOR AND AFTER WORKING AT VARIOUS JOBS WHICH DID NOT INVOLVE A UNION, HE BEGAN EMPLOYMENT WITH THE RESPONDENT EMPLOYER IN JUNE OF 1966, AT WHICH TIME ALSO, NO UNION WAS PRESENT. EARLY IN 1971, HE BECAME AWARE THAT THE RESPONDENT UNION WAS ATTEMPTING TO ORGANIZE THE EMPLOYEES. AFTER CONSULTING THE "COMMITTEE OF JUSTICE AND LIBERTY" OF WHICH HE WAS A MEMBER, AND HE DESCRIBES AS AN "ORGANIZATION WHICH FIGHTS FOR THE RIGHTS OF PEOPLE IN A CHRISTIAN ASPECT, "HE DRAFTED A LETTER TO HIS EMPLOYER WHICH IN EFFECT, VOICED HIS OBJECTION TO SUPPORTING THE UNION AND DRAWS ATTENTION TO A PROVISION OF BILL 167 WHICH WAS BEFORE LEGISLATURE AT THE TIME, AFFECTING HIS SITUATION. ALTHOUGH SIKKEMA WAS NOT REQUIRED TO JOIN THE RESPONDENT TRADE UNION UNDER THE TERMS OF THE RESULTANT COLLECTIVE AGREEMENT

EFFECTIVE SEPTEMBER 1, 1971, HE INDICATED THAT PROCEEDS RESULTING FROM THE MANDATORY CHECK-OFF PROVISIONS HAVE BEEN RETAINED BY HIS EMPLOYER, PENDING A DECISION FROM THIS BOARD IS THIS MATTER.

4. SIKKEMA IS PRESENTLY A MEMBER OF THE CHRISTIAN REFORMED CHURCH OF COLLINGWOOD AND OCCUPIES THE OFFICE OF ELDER IN THE CONGREGATION FOR A SECOND TERM. HIS DUTIES IN THIS REGARD ARE TO READ SERMONS, MAKE HOME VISITATIONS AND GENERALLY "TO MAKE SURE THE WORD OF GOD IS PREACHED FAITHFULLY." HE ATTENDS SERVICES ON AT LEAST ONE OCCASION EVERY SUNDAY AND ALTERNATES EVERY SECOND SUNDAY WITH HIS WIFE FOR THE SECOND SERVICE AS NO NURSERY SERVICES ARE PROVIDED AT THIS TIME. HE CONTRIBUTES SEVEN DOLLARS PER WEEK TOWARDS HIS CHURCH AND ALSO PARTAKES IN "LOOSE COLLECTIONS". HIS OTHER ACTIVITIES INCLUDE PARTICIPATION IN A BIBLE STUDY GROUP AND HE IS ALSO ACTIVE AS A COUNSELLOR IN A YOUTH MOVEMENT KNOWN AS THE CALVINIST CADETS.

5. THE WITNESS FURTHER STATED THAT HE HAD JOINED THE CHRISTIAN LABOUR ASSOCIATION OF CANADA (HEREINAFTER REFERRED TO AS CLAC) SOME-TIME IN 1961 AND IN THIS REGARD HAS PAID DUES AND ATTENDED MEETINGS. WHEN QUESTIONED AS TO HOW HE COULD BECOME A MEMBER IN CLAC AND YET OBJECT TO THE RESPONDENT TRADE UNION, HE STATED THAT THE FORMER'S CONSTITUTION WAS ONE FOUNDED ON THE WORD OF GOD AND THE LAW OF LOVE. AS REGARDS THE CUPE CONSTITUTION HE STATED THAT HE HAD READ IT DURING THE EARLY PART OF 1971 AND CONCLUDED THAT IT DID NOT RECOGNIZE CHRIST AS FIRST, HEAD AND SUPREME AND AS THE MAIN EMPHASIS IN LIFE. HE FURTHER OBJECTED TO THE PROCEDURES ADOPTED BY CUPE AT AN ORGANIZATIONAL MEETING WHEREIN IT COMMENCED WITHOUT PRAYERS. HE RESENTED CUPE'S FORCEFULNESS NOT ONLY IN SOLICITING HIS SUPPORT BUT ALSO OBJECTED TO ITS USE OF STRIKES AND TO ITS "BREAKING" OF THE 6% GUIDELINES IN MONTREAL AS SET BY THE GOVERNMENT.

6. THE WITNESS CONCEDED AT THE HEARING THAT A MEMBER OF HIS CONGREGATION AND FELLOW EMPLOYEE NOT ONLY JOINED CUPE BUT TOOK AN ACTIVE ROLE ON ITS NEGOTIATING COMMITTEE AT THIS TIME. ALTHOUGH THE WITNESS INDICATED THAT THIS SITUATION PRESENTED A "BIG STRUGGLE FOR ME THAT ONE OF MY BROTHERS IN CHRIST HAD JOINED THE UNION", HE MAINTAINED THAT HE WOULD NOT PRESS THE MATTER FURTHER TO THE CONSISTORY LEVEL OF HIS CHURCH ALTHOUGH HE HAD THE POWER TO DO SO. UPON CROSS-EXAMINATION HE STATED THAT THIS BROTHER WAS "ERRING" AND REQUIRED NOURISHMENT BUT THAT CONSISTORY ACTION IN THIS REGARD MIGHT RESULT IN LOSING HIM FROM THE CHURCH. WHEN QUESTIONED AS TO WHETHER THIS CONSTITUTED FORCEFULNESS, HE REPLIED THAT HE HAD FORGIVEN HIM AND THAT THE MEMBER WAS GIVEN ANOTHER CHANCE TO EXERCISE HIS CHOICE. UPON RE-EXAMINATION, THE WITNESS INDICATED THAT HE COULD NOT SERVE GOD BY SUPPORTING AN ORGANIZATION THAT DOES NOT REFLECT THE BIBLE. AS TO THE QUESTION OF WHO SHOULD JUDGE WHETHER AN ORGANIZATION REFLECT THE BIBLE, HE REPLIED THAT IT MUST BE AN ACT OF FAITH.

7. HAVING REGARD TO ALL OF THESE CIRCUMSTANCES, AND TAKING INTO ACCOUNT THE TOTALITY OF THE EVIDENCE PRESENTED HEREIN TOGETHER WITH THE REPRESENTATIONS OF THE PARTIES THERETO AND THE DECISION OF THE BOARD IN THE CORPORATION OF THE BOROUGH OF NORTH YORK CASE (RE: KLAAS STEL OLRB M.R. JULY 1971, P.363), WE ARE SATISFIED THAT APPI SIKKEMA IS AN EMPLOYEE OF THE RESPONDENT EMPLOYER WHO, BECAUSE OF HIS RELIGIOUS CONVICTION OR BELIEF, OBJECTS TO THE PAYING OF DUES OR OTHER ASSESSMENTS TO THE RESPONDENT TRADE UNION.

8. THE BOARD THEREFORE ORDERS AND DIRECTS THAT THE PROVISIONS OF THE COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT EMPLOYER AND THE RESPONDENT TRADE UNION, WHICH ARE OF THE TYPE MENTIONED IN SECTION 38(1)(A) OF THE ACT, DO NOT APPLY TO THE APPLICANT. ACCORDINGLY, THE APPLICANT IS NOT REQUIRED TO PAY ANY DUES, FEES OR OTHER ASSESSMENTS TO THE RESPONDENT UNION PROVIDED THAT AMOUNTS EQUAL TO ANY DUES, FEES OR OTHER ASSESSMENTS ARE PAID BY THE APPLICANT TO OR ARE REMITTED BY THE RESPONDENT EMPLOYER TO A CHARITABLE ORGANIZATION MUTUALLY AGREED UPON BY THE APPLICANT AND THE RESPONDENT TRADE UNION.

9. SHOULD THE APPLICANT AND THE RESPONDENT TRADE UNION FAIL TO AGREE ON SUCH CHARITABLE ORGANIZATION, THE BOARD WILL DESIGNATE A CHARITABLE ORGANIZATION, UPON THE REQUEST OF THE APPLICANT OR THE RESPONDENT TRADE UNION, PURSUANT TO THE PROVISIONS OF SECTION 39(1) OF THE ACT.

DECISION OF BOARD MEMBER O. HODGES: APRIL 4, 1972.

1. I DISSENT.

2. THE APPLICATION OF MR. SIKKEMA WAS PREPARED BY THE COMMITTEE FOR JUSTICE AND LIBERTY AND IS IN THE SAME FORM AS OTHER APPLICATIONS PREPARED BY THAT ORGANIZATION. THE THEME IN THIS CASE, AS ALLEGED IN SIMILAR CASES HEARD BY THE BOARD, IS THAT THE RESPONDENT UNION IS DESCRIBED AS NOT EXPRESSING THE PRINCIPLES OF THE BIBLE IN ITS CONSTITUTION AND THAT IT DOES NOT CARRY ON ITS DAY TO DAY ACTIVITIES ACCORDING TO THE PRICIPLES OF THE BIBLE.

THE EVIDENCE IN CHIEF OF THE APPLICANT IS THAT HIS RELIGIOUS CONVICTION OR BELIEF MOTIVATES HIS DESIRE FOR THE EXEMPTION UNDER S. 39.

3. THE APPLICANT TESTIFIED THAT HE HAS BEEN A MEMBER OF THE CHRISTIAN LABOUR ASSOCIATION OF CANADA, AT LEAST SINCE 1961. HE PAYS DUES TO THAT TRADE UNION WHICH HE IDENTIFIED AS A BARGAINING AGENT FOR EMPLOYEES. HE TESTIFIED HE JOINED THE CHRISTIAN LABOUR ASSOCIATION OF CANADA BECAUSE ITS CONSTITUTION IS FOUNDED ON THE WORD OF GOD AND THE LAW OF LOVE. THE CHRISTIAN LABOUR ASSOCIATION OF CANADA IN EVERY WAY POSSIBLE STRIVES FOR A GOOD RELATIONSHIP WITH THE EMPLOYER.

4. CONCERNING HIS MEMBERSHIP IN A NEUTRAL UNION, THE WITNESS TESTIFIED THAT "THE CHURCH IS AGAINST ANY ORGANIZATION THAT DOES NOT PUT CHRIST FIRST. THE CHURCH WOULD NOT CUT YOU OFF IF A MEMBER OF A NEUTRAL UNION, BUT IT IS NOT IN GOOD CONSCIENCE TO JOIN." THE CHURCH WOULD SAY THE CANADIAN UNION OF PUBLIC EMPLOYEES WAS SECULAR, AND THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS WOULD BE CALLED THAT ALSO. HE SAID HE FOUND IT ALMOST IMPOSSIBLE TO BE NEUTRAL. THE MAJORITY IN PAGE 6 ABOVE SET OUT THE APPLICANT'S TESTIMONY CONCERNING HIS ATTITUDE TOWARD A FELLOW WORKER AND MEMBER OF HIS CHURCH. IN THIS RESPECT HE ALSO SAID, "I DON'T WANT TO SET ONE BROTHER AGAINST THE OTHER." HE ALSO APPEARS TO FROWN ON THE "ERRING" BROTHER BECAUSE HE GOES TO THE BEER PARLOUR. HE DOES NOT CALL OTHER MEMBERS OF CUPE, "BROTHER".

5. THE WITNESS TESTIFIED THAT WHILE THE CANADIAN UNION OF PUBLIC EMPLOYEES WAS ORGANIZING, HE SPOKE TO THE PUBLIC UTILITIES COMMISSION ABOUT MEMBERSHIP IN THE CANADIAN UNION OF PUBLIC EMPLOYEES. HE FILED THE COPY OF A LETTER (EXHIBIT #1) WHICH HAD BEEN PREPARED FOR HIM BY MR. GERALD VANDERZANDE OF THE COMMITTEE FOR JUSTICE AND LIBERTY, AND WHICH THE WITNESS HAD SIGNED AND SENT TO THE PUBLIC UTILITIES COMMISSION. THE LETTER FOLLOWS:

"REGISTERED

DECEMBER 30, 1970.

COLLINGWOOD PUBLIC UTILITIES COMMISSION,
HURONTARIO STREET,
COLLINGWOOD, ONTARIO.

ATTENTION: MR. BILL LANE, PERSONNEL MANAGER

DEAR MR. LANE:

IT HAS BEEN BROUGHT TO MY ATTENTION THAT THE CANADIAN UNION OF PUBLIC EMPLOYEES HAS FILED AN APPLICATION FOR CERTIFICATION WITH THE ONTARIO LABOUR RELATIONS BOARD. I HAVE BEEN GIVEN TO UNDERSTAND THAT THE LABOUR BOARD WILL PROBABLY CERTIFY CUPE. THIS WILL MEAN THAT CUPE WILL BE CONCLUDING A COLLECTIVE AGREEMENT WITH THE COMMISSION ALSO COVERING MY EMPLOYMENT. UNDOUBTEDLY, CUPE WILL BE TRYING TO ENTER INTO AN AGREEMENT THAT WILL CONTAIN A CLAUSE MAKING IT A CONDITION OF (CONTINUED) EMPLOYMENT WITH THE COMMISSION TO JOIN CUPE AND/OR TO PAY CUPE DUES. I SINCERELY HOPE THAT YOU WILL NOT GIVE IN TO SUCH A DEMAND, BUT THAT YOU WILL PROTECT THE CIVIL RIGHTS OF FREEDOM OF ASSOCIATION AND FREEDOM OF RELIGION OF ALL YOUR EMPLOYEES, SO THAT NO ONE WILL BE FORCED INTO SUPPORTING AN ORGANIZATION TO WHOSE PRINCIPLES AND PRACTICES HE CANNOT IN GOOD FAITH SUBSCRIBE.

BECAUSE OF MY CHRISTIAN CONVICTION THAT LABOUR-MANAGEMENT RELATIONS SHOULD BE VIEWED FROM THE BIBLICAL VIEWPOINT WHICH IN NO WAY ALLOWS FOR ANY FORM OF CLASS STRUGGLE, MATERIALISM, SOCIALISM, OR ANY OTHER ISM THAT EXCLUDES THE ALL-INCLUSIVE AUTHORITY OF GOD AND HIS WORD, I RESPECTFULLY REQUEST THE COMMISSION TO HONOUR MY CHRISTIAN BELIEFS BY SAFEGUARDING MY FREEDOM TO WORK UNDER ANY COLLECTIVE AGREEMENT ENTERED INTO WITH CUPE. I HOPE THAT OTHER PEOPLE'S RIGHT TO EMPLOYMENT WITH THE COMMISSION WILL NOT BE INFRINGED ON IN ANY WAY EITHER. THE SUPPORT OR NON-SUPPORT OF CUPE SHOULD BE LEFT ENTIRELY TO THE FREE CHOICE OF YOUR EMPLOYEES AND NO ONE SHOULD TELL ANY OF US WHICH LABOUR PHILOSOPHY WE SHOULD ADOPT AND SUPPORT IN ORDER TO WORK FOR THE COMMISSION.

AS PROOF OF MY GOOD FAITH IN THE MATTER, I HEREBY OFFICIALLY OFFER TO PAY THE EQUIVALENT OF CUPE DUES TO A REGISTERED CANADIAN CHARITY. AS YOU MAY KNOW, RECENTLY THE ONTARIO LEGISLATIVE ASSEMBLY APPROVED BILL 167. THIS IMPORTANT PIECE OF LABOUR LEGISLATION INCLUDES A PROVISION THAT ALLOWS ALL WHO BECAUSE OF RELIGIOUS CONVICTION OR BELIEF CANNOT JOIN OR FINANCIALLY SUPPORT A TRADE UNION, THE RIGHT TO PAY THE EQUIVALENT OF UNION DUES TO A REGISTERED CANADIAN CHARITY.

SINCERELY YOURS,

APPI SIKKEMA,
118 ROBINSON STREET,
COLLINGWOOD, ONTARIO."

MR. SIKKEMA SAID THAT HE HAD BEEN A MEMBER OF THE COMMITTEE FOR JUSTICE AND LIBERTY FOR YEARS AND "I WANTED LEGAL REPRESENTATION SO THAT'S WHERE I WENT." HE TESTIFIED THAT "MY OWN IDEA TO FILE, BECAUSE MY RIGHTS WERE DENIED AND MY FREEDOM OF ASSOCIATION UNDER THE BILL OF RIGHTS WAS DENIED." ASKED BY HIS COUNSEL IF THERE WERE ANY RELIGIOUS REASONS, HE SAID "ALL OF LIFE SHOULD BE BASED ON CHRIST. CUPE IS NOT BASED ON CHRIST."

6. CROSS-EXAMINED, THE WITNESS TESTIFIED THAT HE HAD NOT JOINED THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS VOLUNTARILY AND WITHOUT KNOWING MEMBERSHIP WAS A CONDITION OF EMPLOYMENT. HE WAS NOT A HAPPY MEMBER BECAUSE HE COULD NOT SERVE GOD AS AN INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS MEMBER. CUPE, HE SAID DOES NOT ACCEPT CHRIST AS ITS HEAD. HE HAD READ THE CONSTITUTION LATE LAST YEAR (1970). HE HAD TALKED CUPE OVER WITH HIS FELLOW WORKERS. IT WAS A "BROTHERHOOD OF CUPE, AND I AM A LONE OUTSIDER." REGARDING THE TESTIMONY ABOUT 6% GUIDE LINES REFERRED TO BY THE MAJORITY IN PARAGRAPH 5 ABOVE, THE WITNESS SAID IN CROSS-EXAMINATION THAT MORE THAN 6% INCREASE WAS NOT A SIN, BUT HE MUST RESPECT THE POWER OF THE GOVERNMENT. HE ADMITTED HIS INCREASE

UNDER THE CUPE AGREEMENT IN 1971 WAS MORE THAN 6%, "I RECEIVED MORE THAN 6% - IT IS NOT AGAINST MY CONVICTION TO ACCEPT IF THEY WANT TO PAY ME." CONCERNING THE MATTER OF PRAYER AT THE UNION MEETING, HE WAS ASKED "WAS THERE ANYTHING TO STOP YOU FROM INITIATING ACTION FOR PRAYER?" HE REPLIED "THERE WAS NOTHING TO STOP ME. I WAS NOT GIVING LEADERSHIP". ASKED "WHY NOT JOIN AND WIN THEM OVER" - THE WITNESS REPLIED "IF I WANT TO HELP NEGROES, DO I HAVE TO BECOME A NEGRO?" WITH REGARD TO THE CHRISTIAN LABOUR ASSOCIATION OF CANADA, ITS PRINCIPLE WAS "LOVE GOD FIRST, THEN LOVE YOUR NEIGHBOURS." HE TESTIFIED FURTHER CONCERNING CUPE, "I WILL NOT SAY CUPE AGAINST CHRIST, BUT THEY DON'T SAY THEY ARE FOR HIM." I COULD HAVE DONE MORE ABOUT FINDING OUT. I'M STILL LOOKING FOR THE CONSTITUTION I HAD - I MISPLACED IT." HE SAID HE HAS NOT CONDEMNED THE OTHER EMPLOYEES AND "THEY HAVE NOT TRIED TO MAKE LIFE MISERABLE OR INTIMIDATE ME." ASKED BY A BOARD MEMBER WHO HE KNEW AS AN OFFICIAL OF THE CHRISTIAN LABOUR ASSOCIATION OF CANADA AND WHO HE KNEW AS AN OFFICIAL OF THE COMMITTEE FOR JUSTICE AND LIBERTY, THE WITNESS TESTIFIED THAT GERALD VANDERZANDE (AT THE COUNSEL TABLE) WAS AN OFFICER OF BOTH ORGANIZATIONS.

7. Mr. Tom Edwards, called as a witness by the respondent union, testified that he was a representative of CUPE. The organization of Local 1217, employees of the town of Collingwood, began when he was asked to meet a group of these employees in December of 1970. He was asked about the difficulty that might arise because of people with strong religious convictions. He was not aware of the Sikkema attitude then. Mr. Edwards first dealt with Mr. Den Bok, to whom he explained that he was lay-co-chairman of the Religion Labour Council of Canada. At the meeting held to discuss organization Mr. Den Bok was present and Mr. Edwards believed that Mr. Sikkema was there. The Constitution and Ritual booklets were shown to those present at the meeting. It is of interest to note that on page 5 of the Ritual, one of the questions put to candidates for membership at a local union meeting is:

"PRESIDENT - ARE YOU WILLING TO TAKE AN OBLIGATION THAT WILL BIND YOU TO THE CANADIAN UNION OF PUBLIC EMPLOYEES, BUT WILL IN NO WAY CONFLICT WITH YOUR RELIGIOUS BELIEF OR YOUR DUTIES AS A CITIZEN?"

UNDERLINGING MINE.

8. THE WITNESS IDENTIFIED EXHIBIT 5, A COLLECTIVE AGREEMENT BETWEEN CUPE LOCAL 243 AND ST. JOSEPH'S GENERAL HOSPITAL AT PETER-

BOROUGH, ONTARIO, WHICH HAD BEEN SHOWN TO THE MEETINGS AT COLLINGWOOD REFERRED TO EARLIER HEREIN. THE INTRODUCTION OF THIS COLLECTIVE AGREEMENT IS AS FOLLOWS:

WHEREAS THE ROMAN CATHOLIC RELIGION IS AN ESSENTIAL, ALL PERVASIVE AND DYNAMIC ELEMENT IN ST. JOSEPH'S GENERAL HOSPITAL INFLUENCING EVERY PHASE OF THE ORGANIZATION, ADMINISTRATIVE AND ACTIVITY, AND

WHEREAS THE BASIC PRINCIPLE OF THE ROMAN CATHOLIC RELIGION IS CHRISTIAN CHARITY;

THE PRIMARY PURPOSE AND CONCERN OF THE ST. JOSEPH'S GENERAL HOSPITAL IS SERVICE TO THE INDIVIDUAL PATIENT RENDERED (A) DIRECTLY THROUGH THE MEDICAL AND NURSING STAFF, AND (B) INDIRECTLY THROUGH THE AUXILIARY CORPS, WHICH COMPRISES ALL THE OTHER WORKERS IN THE HOSPITAL, INCLUDING THE EMPLOYEES AND MANAGEMENT, A SERVICE WHICH IT INSPIRED AND MOTIVATED BY THE CONSIDERATION WITH WHICH THE ROMAN CATHOLIC RELIGION HAS ENNOBLED AND SUPERNATURALIZED THE SERVICE AND DEVOTIONS OF ONE HUMAN BEING TO ANOTHER, AND THAT THE PRIMARY AND FIRST CONSIDERATION OF ALL CONCERNED SHALL AT ALL TIMES BE THE SPIRITUAL AND PHYSICAL WELFARE OF PATIENTS

IT IS CLEARLY UNDERSTOOD THAT AT ALL TIMES AND UNDER ALL CIRCUMSTANCES FIRST CONSIDERATION WILL BE GIVEN TO THE WELFARE OF THE PATIENTS.

IN THE IMPLEMENTING OF THIS AGREEMENT DUE REGARD HAS BEEN MADE FOR THE WELFARE OF THE HOSPITAL AS A WHOLE (I.E. PATIENTS, EMPLOYER, EMPLOYEE), FOR THE WELFARE OF THE PEOPLE OF ONTARIO AS A WHOLE AND FOR THE GENERAL WELFARE OF ALL CANADIAN PEOPLE. EVERY EFFORT HAS BEEN MADE BY THE PARTIES TO THIS AGREEMENT TO APPLY THE PRINCIPLES AND TEACHINGS OF THE PAPAL ENCYCLICALS; RERUM NOVARUM (THE RIGHTS AND DUTIES OF CAPITAL AND LABOUR) QUADRAGESIMO ANNO (FORTY YEARS AFTER) AND MATER ET MAGISTRA (MOTHER AND TEACHER) IN ALL OF THEIR LABOUR MANAGEMENT DELIBERATIONS.

ASKED WHETHER ANY OBJECTION HAD BEEN MADE BY SIKKEMA, MR. EDWARDS SAID "NOT UNTIL AFTER THE CONTRACT WAS SIGNED".

9. MR. EDWARDS IN CROSS-EXAMINATION RELATING TO THE RESPONSIBILITY OF A CHRISTIAN IN SOCIETY, SAID IT WAS HIS VIEW THAT "JESUS CHRIST HIMSELF WOULD HAVE JOINED THE UNION". HE SAID THERE WAS A RIGHT TO COMPEL IN MATTERS OF HUMAN WELFARE. QUESTIONED CONCERNING THE ATTITUDE OF MR. SIKKEMA, MR. EDWARDS SAID HE THOUGHT, ALTHOUGH SINCERE, THAT SIKKEMA WAS IN ERROR, THAT HE SHOULD HAVE COME TO THE UNION MEETINGS TO CONVERT OTHERS TO HIS VIEWS. THE RITUAL OF THE UNION INCLUDES THAT J. S. WOODSWORTH GRACE, AS FOLLOWS:

"A GRACE FOR USE AT UNION FUNCTIONS

GRACE BEFORE MEAL

WE ARE THANKFUL FOR THESE AND ALL
THE GOOD THINGS OF LIFE;
WE RECOGNIZE THAT THEY
ARE PART OF OUR COMMON HERITAGE AND COME TO US
THROUGH THE EFFORTS OF OUR BROTHERS
AND SISTERS THE WORLD OVER;
WHAT WE DESIRE FOR OURSELVES, WE WISH FOR ALL;
TO THIS END,
MAY WE TAKE OUR PLACE IN THE WORLD'S WORK
AND THE WORLD'S STRUGGLES.

MR. EDWARDS REFERRED TO THIS AS AN EXPRESSION OF SPIRITUAL TONE HE SAID HE WAS "VERY PROUD OF IT - ALL THAT IS OBVIOUSLY RELIGIOUS - ALL OF THE STYLE, TONE AND LANGUAGE IS RELIGIOUS".

10. BOTH OF THE WITNESS ARE CLEARLY RELIGIOUS MEN. THE APPLICANT SIKKEMA CLAIMS TO HAVE A SINCERE RELIGIOUS CONVICTION OR BELIEF THAT CAUSES HIM TO REFUSE TO SUPPORT THE UNION THAT REPRESENTS HIM AND ALL OF THE OTHER EMPLOYEES. HE TAKES WHAT THE EMPLOYER PAYS AS A RESULT OF COLLECTIVE BARGAINING, WITHOUT A SENSE OF OBLIGATION TO HIS FELLOW WORKERS WHO COMPRISE THE UNION. THAT HIS RELIGION REQUIRES HIM TO LOOK ON ALL BUT HIMSELF AS UNBELIEVERS IS INCOMPREHENSIBLE TO ME. MR. EDWARDS, ON THE OTHER HAND, SINCERELY BELIEVES THAT THE UNION IS DOING A WORK IN THE SERVICE OF GOD, BECAUSE THE WELFARE OF PEOPLE IS PROTECTED AND ADVANCED AS A RESULT. THE QUESTION BEFORE THE BOARD HOWEVER, IS NOT THE RELIGIOUS BONA FIDES OF THE UNION OR ITS SPIRITUAL TONE OR PURPOSE. THE QUESTION IS THE STATE OF MIND OF SIKKEMA, AND WHETHER HIS EXPRESSED PERSONAL MOTIVE AS WHAT MOVES HIM TO SEEK EXEMPTION. THAT IS, DOES HE HAVE A SINCERE, RELIGIOUS CONVICTION OR BELIEF THAT ENTITLES HIM TO THE EXEMPTION UNDER S.39?

11. IT APPEARS THAT THE CUPE RITUAL BOOKLET HAS A SPIRITUAL FLAVOUR, AS THE COLLECTIVE AGREEMENT INTRODUCTION SET OUT IN PARAGRAPH 8 ABOVE CLEARLY HAS. THE STATUS OF CUPE IS CLEARLY THAT OF A TRADE UNION FOR THE PURPOSE OF COLLECTIVE BARGAINING; IT IS ALSO ABUNDANTLY CLEAR FROM THE EVIDENCE IN THIS CASE THAT CUPE IS NOT ANTI-CHRISTIAN OR ANTI-RELIGIOUS AS IT IS ALLEGED BY THE APPLICANT, WHOSE APPLICATION WAS PREPARED BY THE CJL.

12. PARAGRAPH 6 OF THE MAJORITY DECISION DEALS WITH THE ATTITUDE OF SIKKEMA TOWARD A FELLOW EMPLOYEE WHO IS ALSO A MEMBER OF THE TIME CHURCH AS THE APPLICANT, BUT WHO IS AN ACTIVE MEMBER OF CUPE AND A MEMBER OF THE CUPE NEGOTIATING COMMITTEE. THE WITNESS TESTIFIED THAT THIS SITUATION "PRESENTED A BIG STRUGGLE FOR ME". HE SAID HE HAD THE POWER TO PRESS THE MATTER OF HIS "ERRING" CHURCH BROTHER FURTHER TO THE CONSISTORY LEVEL OF HIS CHURCH. THIS WOULD APPEAR TO ME THAT SOME RELIGIOUS PRESSURE WAS AVAILABLE TO THE WITNESS, IF HE WANTED TO USE IT, FOR THE PURPOSE OF ENFORCING A BAN BY HIS CHURCH AGAINST MEMBERSHIP IN CUPE. THE EXERCISE OF SUCH A SANCTION WOULD SURELY INTERFERE WITH SECTION 3 OF THE ACT, IN MY VIEW. THIS SECTION IS:

FREEDOMS

3. EVERY PERSON IS FREE TO JOIN A TRADE UNION OF HIS OWN CHOICE AND TO PARTICIPATE IN ITS LAWFUL ACTIVITIES.
R.S.O. 1970, c.232, s.3.

MR. SIKKEMA DECIDED NOT TO PRESS THE CASE OF HIS "ERRING" BROTHER TO THE CONSISTORY BUT ONLY BECAUSE TO DO SO "MIGHT RESULT IN LOSING HIM FROM THE CHURCH". I TAKE FROM THE EVIDENCE THAT MR. SIKKEMA BELIEVES THAT RELIGIOUS OR SPIRITUAL PRESSURE IS APPROPRIATE AGAINST MEMBERS OF HIS CHURCH WHO JOIN UNIONS OTHER THAN CLAC, PROVIDED IT IS UNIONS, OTHER THAN CLAC, AND NOT HIS CHURCH, THAT LOSES. MR. SIKKEMA DEMANDS RELIGIOUS FREEDOM FOR HIMSELF; HE IS RELUCTANT TO EXTEND FREEDOM OF UNION MEMBERSHIP TO OTHERS.

14. IN THE PARTICULAR CIRCUMSTANCES OF THIS CASE, AND UPON CONSIDERING ALL OF THE EVIDENCE, I FIND AGAINST GRANTING THE EXEMPTION.

1406-71-U: DENNIS H. O'KEEFE LEDGER NO. 64300 TEAMSTERS CHAUFFEURS WAREHOUSE & HELPERS LOCAL UNION 880 WINDSOR ONT. (COMPLAINANT) V. TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS UNION, LOCAL 880, WILFRED P. MAY, PRESIDENT, RYANCRETE-STERLING PRODUCTS, WINDSOR, ONTARIO, A DIVISION OF LAKE ONTARIO CEMENT LIMITED, TORONTO ONTARIO (RESPONDENTS).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS O. HODGES AND J. E. C. ROBINSON, Q.C.

APPEARANCES AT THE HEARING: DENNIS H. O'KEEFE FOR THE COMPLAINANT; WILFRED PHILIP MAY, THOMAS, C. HOWARD, RONALD McMASTER AND LEON PAROLIAN FOR THE RESPONDENTS UNION, LEON Z. McPHERSON, Q.C. AND JOHN T. ULIAN FOR THE RESPONDENT COMPANY.

DECISION OF THE BOARD: APRIL 5, 1972.

1. THE NAME "TEAMSTERS LOCAL UNION 880 WILFRED P. MAY PRESIDENT RYANCRETE STERLING PROD. WINDSOR ONT. SUB DIV. OF LAKE ONTARIO CEMENT LTD. TORONTO ONT." APPEARING IN THE STYLE OF CAUSE OF THIS APPLICATION AS THE NAME OF THE RESPONDENTS IS AMENDED TO READ: "TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS UNION, LOCAL 880, WILFRED P. MAY, PRESIDENT, RYANCRETE-STERLING PRODUCTS, WINDSOR, ONTARIO, A DIVISION OF LAKE ONTARIO CEMENT LIMITED, TORONTO, ONTARIO".

2. THIS IS A COMPLAINT UNDER SECTION 79 OF THE LABOUR RELATIONS ACT IN WHICH THE COMPLAINANT ALLEGES THAT HE HAS BEEN DEALT WITH BY THE RESPONDENTS CONTRARY TO THE PROVISIONS OF SECTION 60 OF THE ACT.

3. THE MATTER ARISES OUT OF THE FACT THAT IN 1970 THE RESPONDENT COMPANY CAME INTO BEING AS THE RESULT OF THE MERGING OF TWO COMPANIES. THE MERGER INVOLVED THE QUESTION OF DOVETAILING THE SENIORITY OF THE EMPLOYEES WHO FORMERLY WORKED FOR THE COMPANIES PRIOR TO THE MERGER AND OF THE PRODUCTION OF A NEW OVERALL SENIORITY LIST.

4. BECAUSE OF LACK OF RECORDS OR INCOMPLETE RECORDS, THE SORTING OUT OF RELATIVE SENIORITY OF EMPLOYEES PRESENTED DIFFICULTIES. THE MANAGEMENT OF THE COMPANY PRODUCED SEVERAL LISTS TO WHICH OBJECTION WAS TAKEN BY THE COMPLAINANT AND BY OTHER EMPLOYEES.

5. ON ACCOUNT OF ITS OWN LACK OF PROPER SENIORITY LISTS AND THE DIFFICULTIES IT WAS ENCOUNTERING, THE COMPANY ENLISTED THE HELP OF THE UNION AND INDICATED THAT IT WOULD ACCEPT THE LIST THAT THE UNION APPROVED.

6. THE UNION CONDUCTED A SEARCH OF ITS OWN RECORDS AND MADE INQUIRIES OF EMPLOYEES AS THE RESULT OF WHICH SEVERAL CHANGES IN SENIORITY DATES WERE EFFECTED. AMONG THOSE DATES ADJUSTED FAVOURABLY ON BEHALF OF EMPLOYEES WHO HAD QUESTIONED PREVIOUS LISTS WAS THAT OF THE COMPLAINANT. HE IS SATISFIED THAT THE PROPER SENIORITY DATE HAS BEEN ASSIGNED TO HIM AS THE RESULT OF THE UNION INVESTIGATION - AIDED, OF COURSE, BY HIS OWN EFFORTS. THE COMPLAINT, THEREFORE, DOES NOT RELATE TO THE DETERMINATION OF THE COMPLAINANT'S SENIORITY DATE.

7. THE COMPLAINT RELATES PARTICULARLY TO THE SENIORITY DATE ARRIVED AT BY THE UNION WITH RESPECT TO ONE CHARETTE. THE RESULT OF THE ADJUSTMENTS MADE TO THE SENIORITY LISTS WITH RESPECT TO CHARETTE WAS THAT HE WAS MOVED UP FROM A STARTING DATE SHOWN ON SEVERAL SENIORITY LISTS PUBLISHED BY THE RESPONDENT COMPANY AND ONE, DATED FEBRUARY 23, 1968, OF RYANS BUILDERS SUPPLY LIMITED (ONE OF THE MERGED COMPANIES) AS MAY 24, 1967, TO A STARTING DATE OF MAY 25, 1965. THIS MOVE PLACE CHARETTE AHEAD OF THE COMPLAINANT ON THE FINAL SENIORITY LISTS.

8. THE BASIC ALLEGATION WHICH THE COMPLAINANT MAKES IS THAT CHARETTE DID NOT PROVE HIS ENTITLEMENT TO THE EARLIER COMMENCEMENT DATE, PRINCIPALLY BECAUSE OF WHAT O'KEEFE CONTENDED WAS A GAP IN SERVICE, OR ALTERNATIVELY, THAT THE UNION GAVE HIM THE DATE ON EVIDENCE THAT INsofar AS THE COMPLAINANT IS CONCERNED WAS INSUFFICIENT TO WARRANT THE ACTION WHICH THE UNION TOOK TO THE OBVIOUS DETRIMENT OF THE COMPLAINANT. HE GRIEVED AGAINST THE SENIORITY LISTS AND HE PROTESTS THAT THE UNION OUGHT TO HAVE PROCESSED THE GRIEVANCE ON HIS BEHALF RATHER THAN REJECT IT AS THE UNION DID.

9. IN DETERMINING CHARETTE'S SENIORITY, THE UNION CONSULTED ITS OWN RECORDS OF MEMBERSHIP AND DUES PAYMENTS. IT OBTAINED STATEMENTS FROM A FELLOW EMPLOYEE WHO HAD WORKED WITH CHARETTE IN 1965. IT TOO HAD A SENIORITY LIST FOR RYANS BUILDERS SUPPLIES LIMITED SHOWING CHARETTE'S SENIORITY DATE AS APRIL 26, 1965. THIS LIST IS DATED JULY 14, 1966. THE UNION ALSO WAS PRESENTED WITH AN AFFIDAVIT SWORN BY CHARETTE SETTING OUT THE HISTORY OF HIS EMPLOYMENT. THIS SHOWS THE DATE OF COMMENCEMENT AS APRIL 26, 1965 WITH RYANS BUILDERS SUPPLIES LIMITED AND ASSERTS CONTINUOUS EMPLOYMENT WITH ITS SUCCESSOR.

10. WHETHER THIS BOARD WOULD HAVE COME TO A DIFFERENT CONCLUSION WITH RESPECT TO THE ASSIGNMENT OF A SENIORITY DATE TO CHARLETTE UPON THE EVIDENCE THAT WAS BEFORE THE UNION IS NOT THE CONCERN OF THE BOARD UNDER SECTION 60 OF THE ACT, SO LONG AS THE BOARD IS SATISFIED THAT THE DECISION OF THE UNION WAS REACHED IN GOOD FAITH UPON THAT EVIDENCE.

11. IN THE PRESENT CASE, WE ARE OF THE OPINION THAT ALTHOUGH MR. O'KEEFE IS OBVIOUSLY NOT SATISFIED WITH THE DECISION REACHED BY THE UNION, HE HAS NOT ESTABLISHED UPON THE EVIDENCE THAT IN ITS DEALINGS WITH HIM AND IN ITS DECISION WITH RESPECT TO CHARETTE'S SENIORITY DATE, THE UNION ACTED IN A MANNER THAT WAS ARBITRARY, DISCRIMINATORY OR IN BAD FAITH. WE FIND, IN FACT, THAT THE UNION AFFORDED MR. O'KEEFE A FAIR OPPORTUNITY TO MAKE HIS CASE AND THAT IT ACTED THROUGHOUT IN GOOD FAITH, WITHOUT DISCRIMINATION AND IN A MANNER WHICH WAS NOT ARBITRARY.

12. THE COMPLAINANT NAMED THE EMPLOYER AS A RESPONDENT, NOTWITHSTANDING THE FACT THAT SECTION 60 OF THE ACT HAS DIRECT REFERENCE ONLY TO THE UNION. IN ANY EVENT, WE FIND THE COMPANY IS NOT IN BREACH OF THIS OR ANY OTHER SECTION OF THE LABOUR RELATIONS ACT.

13. IN THE RESULT, THE COMPLAINT IS DISMISSED.

1616-71-R: THE BRYANT PRESS LIMITED (APPLICANT) V. TORONTO TYPOGRAPHICAL UNION No. 91, ITU (RESPONDENT) V. GROUP OF EMPLOYEES (INTERVENERS).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS F. W. MURRAY AND P. J. O'KEEFE.

APPEARANCES AT THE HEARING: A. P. TARASUK, J. HEATHER, J. WELD AND M. ZALESKI FOR THE APPLICANT; S. T. GOUDGE AND B. MCKENZIE FOR THE RESPONDENT; F. R. VON VEH, D. GLEESON AND J. DINGLE FOR THE INTERVENERS.

DECISION OF THE BOARD: APRIL 7, 1972.

1. THIS IS AN APPLICATION MADE UNDER SECTION 55 OF THE LABOUR RELATIONS ACT.

2. THE PARTIES AGREED TO THE FOLLOWING STATEMENT OF FACTS. ON MARCH 15, 1971 THE BUSINESS OF MCCORQUODALE & BLADES (PRINTERS) LIMITED (HEREINAFTER REFERRED TO AS MCCORQUODALE & BLADES) WAS SOLD TO THE BRYANT PRESS LIMITED (HEREINAFTER REFERRED TO AS BRYANT). APPROXIMATELY ONE MONTH AFTER THE SALE BRYANT COMMENCED TO INTEGRATE THE COMPOSING ROOM AND PROOF ROOM EMPLOYEES OF THE TWO COMPANIES. THIS INTEGRATION OF THE SAID WORK FORCES LARGELY TOOK PLACE IN THE FALL OF 1971 AND WAS COMPLETED BY NOVEMBER 1ST IN THAT YEAR. THAT IS TO SAY, BY THAT DATE ALL OF THE FORMER COMPOSING AND PROOF ROOM EMPLOYEES OF MCCORQUODALE & BLADES WERE WORKING WITH AND DOING THE SAME TYPE OF WORK AS THE COMPOSING ROOM AND PROOF ROOM EMPLOYEES OF BRYANT AS PART OF A SINGLE OPERATION AND AT THE SAME LOCATION. THE NUMBER OF BRYANT EMPLOYEES AS COMPARED WITH MCCORQUODALE & BLADES EMPLOYEES WORKING IN THE UNIFIED COMPOSING ROOM AND PROOF ROOM OPERATION SINCE THE INTEGRATION HAS BEEN COMPLETED IS IN A RATIO OF ROUGHLY THREE TO ONE.

3. MCCORQUODALE & BLADES PRIOR TO THE SALE OF ITS BUSINESS TO BRYANT WAS A PARTY TO A COLLECTIVE AGREEMENT WITH THE COUNCIL OF PRINTING INDUSTRIES OF CANADA AND THE RESPONDENT THE TORONTO TYPOGRAPHICAL UNION No. 91, ITU, EFFECTIVE FROM DECEMBER 1, 1969 UNTIL MARCH 31, 1972. ARTICLE 6 OF THE COLLECTIVE AGREEMENT TITLED "JURISDICTION" READS IN PART: "JURISDICTION OF THE UNION AND THE APPROPRIATE UNIT FOR COLLECTIVE

BARGAINING IS DEFINED AS INCLUDING ALL COMPOSING ROOM WORK AND INCLUDES CLASSIFICATIONS SUCH AS..." THERE THEN FOLLOWS A LIST OF JOB CLASSIFICATIONS. THE PARTIES AGREED THAT ALL OF THE EMPLOYEES OF MCCORQUODALE & BLADES EMPLOYED IN ITS COMPOSING ROOM AND PROOF ROOM SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THAT RANK FELL WITHIN THE BARGAINING UNIT AND WERE COVERED BY THE COLLECTIVE AGREEMENT. IT WAS ALSO AGREED THAT THE RESPONDENT HAD FILED A GRIEVANCE WITH BRYANT UNDER THE SAID COLLECTIVE AGREEMENT ON FEBRUARY 17, 1972.

4. SUBSECTION (2) OF SECTION 55 OF THE ACT READS IN PART:

WHERE AN EMPLOYER WHO IS BOUND BY OR IS A PARTY TO A COLLECTIVE AGREEMENT WITH A TRADE UNION... SELLS HIS BUSINESS, THE PERSON TO WHOM THE BUSINESS HAS BEEN SOLD IS, UNTIL THE BOARD OTHERWISE DECLARES, BOUND BY THE COLLECTIVE AGREEMENT AS IF HE HAD BEEN A PARTY THERETO...

SUBSECTION (3) OF SECTION 55 READS IN PART:

WHERE AN EMPLOYER ON BEHALF OF WHOSE EMPLOYEES A TRADE UNION...HAS BEEN CERTIFIED AS BARGAINING AGENT OR HAS GIVEN OR IS ENTITLED TO GIVE NOTICE UNDER SECTION 13, SELLS HIS BUSINESS, THE TRADE UNION...CONTINUES, UNTIL THE BOARD OTHERWISE DECLARES, TO BE THE BARGAINING AGENT FOR THE EMPLOYEES OF THE PERSON TO WHOM THE BUSINESS WAS SOLD IN THE LIKE BARGAINING UNIT IN THAT BUSINESS...

SUBSECTION (6) OF SECTION 55 READS:

NOTWITHSTANDING SUBSECTION 2 AND 3, WHERE A BUSINESS WAS SOLD TO A PERSON WHO CARRIES ON ONE OR MORE OTHER BUSINESSES AND A TRADE UNION OR COUNCIL OF TRADE UNIONS IS THE BARGAINING AGENT OF THE EMPLOYEES IN ANY OF THE BUSINESSES AND SUCH PERSON INTERMINGLES THE EMPLOYEES OF ONE OF THE BUSINESSES WITH THOSE OF ANOTHER OF THE BUSINESSES, THE BOARD MAY, UPON THE APPLICATION OF ANY PERSON, TRADE UNION OR COUNCIL OF TRADE UNIONS CONCERNED.

- (A) DECLARE THAT THE PERSON TO WHOM THE BUSINESS WAS SOLD IS NO LONGER BOUND BY THE COLLECTIVE AGREEMENT REFERRED TO IN SUBSECTION 2;
- (B) DETERMINE WHETHER THE EMPLOYEES CONCERNED CONSTITUTE ONE OR MORE APPROPRIATE BARGAINING UNITS;

12. THE COMPLAINANT NAMED THE EMPLOYER AS A RESPONDENT, NOTWITHSTANDING THE FACT THAT SECTION 60 OF THE ACT HAS DIRECT REFERENCE ONLY TO THE UNION. IN ANY EVENT, WE FIND THE COMPANY IS NOT IN BREACH OF THIS OR ANY OTHER SECTION OF THE LABOUR RELATIONS ACT.

13. IN THE RESULT, THE COMPLAINT IS DISMISSED.

1616-71-R: THE BRYANT PRESS LIMITED (APPLICANT) V. TORONTO TYPOGRAPHICAL UNION No. 91, ITU (RESPONDENT) V. GROUP OF EMPLOYEES (INTERVENERS).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS F. W. MURRAY AND P. J. O'KEEFE.

APPEARANCES AT THE HEARING: A. P. TARASUK, J. HEATHER, J. WELD AND M. ZALESKI FOR THE APPLICANT; S. T. GOUDGE AND B. MCKENZIE FOR THE RESPONDENT; F. R. VON VEH, D. GLEESON AND J. DINGLE FOR THE INTERVENERS.

DECISION OF THE BOARD: APRIL 7, 1972.

1. THIS IS AN APPLICATION MADE UNDER SECTION 55 OF THE LABOUR RELATIONS ACT.

2. THE PARTIES AGREED TO THE FOLLOWING STATEMENT OF FACTS. ON MARCH 15, 1971 THE BUSINESS OF MCCORQUODALE & BLADES (PRINTERS) LIMITED (HEREINAFTER REFERRED TO AS MCCORQUODALE & BLADES) WAS SOLD TO THE BRYANT PRESS LIMITED (HEREINAFTER REFERRED TO AS BRYANT). APPROXIMATELY ONE MONTH AFTER THE SALE BRYANT COMMENCED TO INTEGRATE THE COMPOSING ROOM AND PROOF ROOM EMPLOYEES OF THE TWO COMPANIES. THIS INTEGRATION OF THE SAID WORK FORCES LARGELY TOOK PLACE IN THE FALL OF 1971 AND WAS COMPLETED BY NOVEMBER 1ST IN THAT YEAR. THAT IS TO SAY, BY THAT DATE ALL OF THE FORMER COMPOSING AND PROOF ROOM EMPLOYEES OF MCCORQUODALE & BLADES WERE WORKING WITH AND DOING THE SAME TYPE OF WORK AS THE COMPOSING ROOM AND PROOF ROOM EMPLOYEES OF BRYANT AS PART OF A SINGLE OPERATION AND AT THE SAME LOCATION. THE NUMBER OF BRYANT EMPLOYEES AS COMPARED WITH MCCORQUODALE & BLADES EMPLOYEES WORKING IN THE UNIFIED COMPOSING ROOM AND PROOF ROOM OPERATION SINCE THE INTEGRATION HAS BEEN COMPLETED IS IN A RATIO OF ROUGHLY THREE TO ONE.

3. MCCORQUODALE & BLADES PRIOR TO THE SALE OF ITS BUSINESS TO BRYANT WAS A PARTY TO A COLLECTIVE AGREEMENT WITH THE COUNCIL OF PRINTING INDUSTRIES OF CANADA AND THE RESPONDENT THE TORONTO TYPOGRAPHICAL UNION No. 91, ITU, EFFECTIVE FROM DECEMBER 1, 1969 UNTIL MARCH 31, 1972. ARTICLE 6 OF THE COLLECTIVE AGREEMENT TITLED "JURISDICTION" READS IN PART: "JURISDICTION OF THE UNION AND THE APPROPRIATE UNIT FOR COLLECTIVE

BARGAINING IS DEFINED AS INCLUDING ALL COMPOSING ROOM WORK AND INCLUDES CLASSIFICATIONS SUCH AS..." THERE THEN FOLLOWS A LIST OF JOB CLASSIFICATIONS. THE PARTIES AGREED THAT ALL OF THE EMPLOYEES OF MCCORQUODALE & BLADES EMPLOYED IN ITS COMPOSING ROOM AND PROOF ROOM SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THAT RANK FELL WITHIN THE BARGAINING UNIT AND WERE COVERED BY THE COLLECTIVE AGREEMENT. IT WAS ALSO AGREED THAT THE RESPONDENT HAD FILED A GRIEVANCE WITH BRYANT UNDER THE SAID COLLECTIVE AGREEMENT ON FEBRUARY 17, 1972.

4. SUBSECTION (2) OF SECTION 55 OF THE ACT READS IN PART:

WHERE AN EMPLOYER WHO IS BOUND BY OR IS A PARTY TO A COLLECTIVE AGREEMENT WITH A TRADE UNION... SELLS HIS BUSINESS, THE PERSON TO WHOM THE BUSINESS HAS BEEN SOLD IS, UNTIL THE BOARD OTHERWISE DECLARES, BOUND BY THE COLLECTIVE AGREEMENT AS IF HE HAD BEEN A PARTY THERETO...

SUBSECTION (3) OF SECTION 55 READS IN PART:

WHERE AN EMPLOYER ON BEHALF OF WHOSE EMPLOYEES A TRADE UNION...HAS BEEN CERTIFIED AS BARGAINING AGENT OR HAS GIVEN OR IS ENTITLED TO GIVE NOTICE UNDER SECTION 13, SELLS HIS BUSINESS, THE TRADE UNION...CONTINUES, UNTIL THE BOARD OTHERWISE DECLARES, TO BE THE BARGAINING AGENT FOR THE EMPLOYEES OF THE PERSON TO WHOM THE BUSINESS WAS SOLD IN THE LIKE BARGAINING UNIT IN THAT BUSINESS...

SUBSECTION (6) OF SECTION 55 READS:

NOTWITHSTANDING SUBSECTION 2 AND 3, WHERE A BUSINESS WAS SOLD TO A PERSON WHO CARRIES ON ONE OR MORE OTHER BUSINESSES AND A TRADE UNION OR COUNCIL OF TRADE UNIONS IS THE BARGAINING AGENT OF THE EMPLOYEES IN ANY OF THE BUSINESSES AND SUCH PERSON INTERMINGLES THE EMPLOYEES OF ONE OF THE BUSINESSES WITH THOSE OF ANOTHER OF THE BUSINESSES, THE BOARD MAY, UPON THE APPLICATION OF ANY PERSON, TRADE UNION OR COUNCIL OF TRADE UNIONS CONCERNED.

- (A) DECLARE THAT THE PERSON TO WHOM THE BUSINESS WAS SOLD IS NO LONGER BOUND BY THE COLLECTIVE AGREEMENT REFERRED TO IN SUBSECTION 2;
- (B) DETERMINE WHETHER THE EMPLOYEES CONCERNED CONSTITUTE ONE OR MORE APPROPRIATE BARGAINING UNITS;

- (c) DECLARE WHICH TRADE UNION, TRADE UNIONS OR COUNCIL OF TRADE UNIONS, IF ANY, SHALL BE THE BARGAINING AGENT OR AGENTS FOR THE EMPLOYEES IN SUCH UNIT OR UNITS; AND
- (d) AMEND, TO SUCH EXTEND AS THE BOARD CONSIDERS NECESSARY, ANY CERTIFICATE ISSUED TO ANY TRADE UNION OR COUNCIL OF TRADE UNIONS OR ANY BARGAINING UNIT DEFINED IN ANY COLLECTIVE AGREEMENT.

SUBSECTION (8) OF SECTION 55 READS:

BEFORE DISPOSING OF ANY APPLICATION UNDER THIS SECTION, THE BOARD MAY MAKE SUCH INQUIRY, MAY REQUIRE THE PRODUCTION OF SUCH EVIDENCE AND THE DOING OF SUCH THINGS, OR MAY HOLD SUCH REPRESENTATION VOTES, AS IT CONSIDERS APPROPRIATE.

5. COUNSEL FOR THE RESPONDENT SUBMITS THAT THE COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND McCorquodale & Blades bound not only the former composing room and proof room employees of the latter company, but also was binding upon the composing room and proof room employees of Bryant, since Bryant, by the provisions of subsection (2) of section 55, in effect, became a party to the collective agreement and its composing room and proof room employees fall within the recognition clause of the agreement. This being so, counsel submits there has not been an "intermingling" of employees as contemplated by subsection (6) of section 55 and accordingly there no basis for the board to make any other declaration than that the respondent acquired the bargaining rights for the composing room and proof room employees of both the vendor and purchasing companies as a result of the sale by virtue of the respondent's collective agreement with the vendor.

6. SUBSECTION (2) OF SECTION 55 PROVIDES THAT THE PURCHASER OF A BUSINESS IS BOUND BY A COLLECTIVE AGREEMENT ENTERED INTO BY THE VENDOR AS IF HE HAD BEEN A PARTY THERETO. THE PARTIES TO THE COLLECTIVE AGREEMENT IN THE INSTANT CASE WERE THE RESPONDENT AND McCorquodale & Blades and the employees bound by the agreement prior to the sale were the composing room and proof room employees of McCorquodale & Blades. AS WE READ SUBSECTION (2), IT IS IMPLICIT IN THE LANGUAGE OF THE SUBSECTION THAT THE EMPLOYEES BOUND BY THE COLLECTIVE AGREEMENT SUBSEQUENT TO A SALE ARE ONLY THOSE EMPLOYEES WHO WERE BOUND BY THE COLLECTIVE AGREEMENT PRIOR TO THE SALE. IN THE INSTANT CASE THIS MEANS THE FORMER COMPOSING ROOM AND PROOF ROOM EMPLOYEES OF McCorquodale & Blades. THE ABOVE INTERPRETATION OF SUBSECTION (2), MOREOVER,

IS CONSISTENT WITH THE PURPOSE OF SECTION 55 WHICH IS TO PRESERVE EXISTING BARGAINING RIGHTS HELD BY A TRADE UNION AS A RESULT OF THE SALE OF A BUSINESS. THE INTENT OF THE SECTION WAS NOT TO GIVE TO A TRADE UNION BARGAINING RIGHTS WHICH IT HAD NOT PREVIOUSLY HELD. WE WOULD FURTHER POINT OUT THAT SUBSECTION (3) LENDS SUPPORT TO THE ABOVE INTERPRETATION OF SUBSECTION (2). MORE PARTICULARLY, SUBSECTION (3) PROVIDES THAT A TRADE UNION WHICH HOLDS BARGAINING RIGHTS FOR A UNIT OF EMPLOYEES OF A VENDOR CONTINUES TO HOLD THOSE BARGAINING RIGHTS FOR THE EMPLOYEES OF THE PURCHASER IN THE LIKE BARGAINING UNIT. BY ANALOGY WITH SUBSECTION (3), THE UNIT OF EMPLOYEES COVERED BY A COLLECTIVE AGREEMENT WHICH BECOMES BINDING UPON A PURCHASER UNDER SUBSECTION (2) WOULD ALSO BE THE EMPLOYEES IN THE LIKE BARGAINING UNIT. FOR THE FOREGOING REASONS, WE CANNOT ACCEPT THE INTERPRETATION PLACED ON SUBSECTION (2) OF SECTION 55 BY COUNSEL FOR THE RESPONDENT. WE FIND RATHER THAT AS OF THE DATE OF THE SALE OF THE BUSINESS OF MCCORQUODALE & BLADES AND BRYANT ON MARCH 15, 1971, THE COLLECTIVE AGREEMENT TO WHICH BRYANT BECAME A PARTY BY REASON OF THE SALE ONLY REMAINED BINDING ON THE FORMER EMPLOYEES OF MCCORQUODALE & BLADES. ACCORDINGLY, ONCE THE INTERMINGLING OF THE EMPLOYEES OF THE TWO COMPANIES COMMENCED, BRYANT WAS ENTITLED TO MAKE THE INSTANT APPLICATION AND TO APPLY FOR THE REMEDIES AVAILABLE UNDER SUBSECTION (6) OF SECTION 55.

7. BASED ON THE AGREED STATEMENT OF FACTS, THE BOARD FINDS THAT THERE WAS AN INTERMINGLING OF THE FORMER COMPOSING ROOM AND PROOF ROOM EMPLOYEES OF MCCORQUODALE & BLADES AND THE COMPOSING ROOM AND PROOF ROOM EMPLOYEES OF BRYANT WITHIN THE MEANING OF SUBSECTION (6). FURTHER, WE SEE NO REASON TO DECLINE TO MAKE A DECLARATION UNDER THE SUBSECTION BECAUSE BRYANT WAITED UNTIL TEN MONTHS AFTER THE INTERMINGLING COMMENCED TO MAKE ITS APPLICATION. IN THIS REGARD WE WOULD POINT OUT THAT THE INTERMINGLING LARGELY TOOK PLACE IN THE FALL OF 1971 AND WAS ONLY COMPLETED BY NOVEMBER 1ST IN THAT YEAR. MOREOVER, THE RESPONDENT CANNOT CLAIM THAT ITS POSITION HAS BEEN PREJUDICED AS IT WAS AWARE OF THE INTERMINGLING FROM THE TIME THAT IT BEGAN AND COULD HAVE BROUGHT AN APPLICATION AT ANY TIME AFTER, OR FOR THAT MATTER BEFORE, THE INTERMINGLING COMMENCED, FOR A DECLARATION AS TO THE BARGAINING RIGHTS WHICH IT HAD ACQUIRED AS A RESULT OF THE SALE UNDER ITS COLLECTIVE AGREEMENT.

8. IN LIGHT OF THE EVIDENCE AS CONTAINED IN THE AGREED STATEMENT OF FACTS AND IN PARTICULAR THE FACT THAT APPROXIMATELY TWO-THIRDS OF THE INTERMINGLED EMPLOYEES HAVE NOT BEEN REPRESENTED BY ANY TRADE UNION, THE BOARD DEEMS IT ADVISABLE IN THE CIRCUMSTANCES, PURSUANT TO THE POWERS VESTED IN IT UNDER SUBSECTION (8), TO DIRECT THE TAKING OF A REPRESENTATION VOTE.

9. A REPRESENTATION VOTE WILL BE TAKEN OF ALL OF THE EMPLOYEES

OF THE BRYANT PRESS LIMITED AT TORONTO EMPLOYED IN ITS COMPOSING ROOM AND PROOF ROOM, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN.

10. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BE REPRESENTED BY TORONTO TYPOGRAPHICAL UNION No. 91, ITU IN THEIR EMPLOYMENT RELATIONS WITH THE BRYANT PRESS LIMITED.

11. THE MATTER IS REFERRED TO THE REGISTRAR.

1751-71-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) V. TEXTURCH YARNS LIMITED (RESPONDENT).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND E. BOYER.

DECISION OF THE BOARD: APRIL 11, 1972.

1. THE APPLICANT HAS REQUESTED THAT A PRE-HEARING REPRESENTATION VOTE BE TAKEN.

2. THERE WERE FILED IN THIS MATTER RESIGNATIONS FROM MEMBERSHIP SIGNED BY CERTAIN EMPLOYEES OF THE RESPONDENT. FOR THE REASONS GIVEN IN THE CALDWELL LINEN MILLS LIMITED CASE, OLRB MONTHLY REPORT, MARCH 1967, P. 948, THERE IS NO NEED FOR THE BOARD TO INQUIRE INTO THE ORIGINATION OF THESE DOCUMENTS SINCE ALL THE EMPLOYEES IN THE VOTING CONSTITUENCY WILL HAVE AN OPPORTUNITY TO EXPRESS THEIR TRUE WISHES WITH RESPECT TO REPRESENTATION BY THE APPLICANT AT THE TIME THE PRE-HEARING REPRESENTATION VOTE IS TAKEN.

3. IT APPEARS TO THE BOARD ON AN EXAMINATION OF THE RECORDS OF THE APPLICANT AND THE RECORDS OF THE RESPONDENT THAT NOT LESS THAN THIRTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE VOTING CONSTITUENCY HEREINAFTER DESCRIBED WERE MEMBERS OF THE APPLICANT AT THE TIME THE APPLICATION WAS MADE.

4. THE BOARD DIRECTS THAT A PRE-HEARING REPRESENTATION VOTE BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN THE FOLLOWING VOTING CONSTITUENCY:

ALL EMPLOYEES OF THE RESPONDENT AT HAWKESBURY, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD.

5. ALL EMPLOYEES OF THE RESPONDENT IN THE VOTING CONSTITUENCY ON THE 30TH DAY OF MARCH, 1972 WHO HAVE NOT VOLUNTARILY TERMINATED THEIR EMPLOYMENT OR WHO HAVE NOT BEEN DISCHARGED FOR CAUSE BETWEEN THE 30TH DAY OF MARCH, 1972 AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.
6. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BE REPRESENTED BY THE APPLICANT IN THEIR EMPLOYMENT RELATIONS WITH THE RESPONDENT.
7. THE MATTER IS REFERRED TO THE REGISTRAR.

1532-71-M: VERSASERVICES LIMITED (EMPLOYER) v. CANADIAN UNION OF GENERAL EMPLOYEES (TRADE UNION).

BEFORE: O.B. SHIME, VICE-CHAIRMAN, AND BOARD MEMBERS O. HODGES AND H.F. IRWIN.

APPEARANCES AT THE HEARING: B.M.W. PAULIN, Q.C., GRANT F. CLARK, L.W. RICHARDSON AND RICHARD T. JOHNSTON FOR THE EMPLOYER; GEO. MILLER, LOUISETTE McLACHLAN AND PAT MURPHY FOR THE TRADE UNION.

DECISION OF THE BOARD: APRIL 10, 1972.

1. THIS IS AN APPLICATION PURSUANT TO SECTION 96 OF THE LABOUR RELATIONS ACT WHEREIN THE MINISTER OF LABOUR HAS REFERRED TO THE BOARD THE QUESTION AS TO WHETHER HE HAS THE AUTHORITY UNDER THE LABOUR RELATIONS ACT TO APPOINT A CONCILIATION OFFICER.
2. THE FACTS OF THIS CASE ARE AS FOLLOWS: ON OCTOBER 19, 1971, THE TRADE UNION IN THIS MATTER WAS CERTIFIED FOR ALL EMPLOYEES OF VERSASERVICES LIMITED AT THE ONTARIO CRIPPLED CHILDREN'S CENTRE WITH CERTAIN EXCEPTIONS WHICH ARE NOT RELEVANT. IT ALSO APPEARS THAT THE PARTIES HAD A COLLECTIVE BARGAINING RELATIONSHIP FOR A GROUP OF EMPLOYEES PERFORMING SIMILAR WORK AT THE HILLCREST CONVALESCENT HOSPITAL (HEREIN-AFTER REFERRED TO AS "HILLCREST"), AND THAT THERE WAS A COLLECTIVE AGREEMENT IN EXISTENCE WITH RESPECT TO HILLCREST (EXHIBIT No. 3).
3. THE PARTIES COMMENCED NEGOTIATIONS AND ON NOVEMBER 2, 1971, ENTERED INTO A MEMORANDUM OF SETTLEMENT (EXHIBIT No. 2) WITH RESPECT TO THE EMPLOYEES OF THE ONTARIO CRIPPLED CHILDREN'S CENTRE. THAT MEMORANDUM PROVIDED INTER ALIA:

1. THE PARTIES HEREIN AGREE TO THE TERMS OF THIS MEMORANDUM AS CONSTITUTING FULL SETTLEMENT OF ALL MATTERS DEALT WITH IN CONNECTION WITH THE NEGOTIATIONS FOR THE MAKING OF A COLLECTIVE AGREEMENT.

2. THE UNDERSIGNED REPRESENTATIONS OF THE PARTIES DO HEREBY AGREE TO RECOMMEND COMPLETE ACCEPTANCE OF ALL TERMS OF THIS MEMORANDUM TO THEIR RESPECTIVE PRINCIPALS.
3. THE PARTIES HEREIN AGREE THAT THE TERM OF THE COLLECTIVE AGREEMENT SHALL BE FROM OCTOBER 19, 1971 TO OCTOBER 18, 1974.
4. THE PARTIES HEREIN AGREE THAT THE COLLECTIVE AGREEMENT SHALL INCLUDE ALL OF THE TERMS OF THE COLLECTIVE AGREEMENT IN FORCE BETWEEN THE PARTIES AT THE HILLCREST CONVALESCENT HOSPITAL HOSPITAL EXCEPT THE FOLLOWING:
 - (A) ARTICLE 1.03 A LETTER OF UNDERSTANDING WILL BE DRAWN UP BETWEEN THE PARTIES TO INCLUDE THE WORDS "BY VIRTUE OF THE WORK BEING PERFORMED BY PERSONS OUTSIDE OF THE BARGAINING UNIT."

THERE ARE OTHER MATTERS CONTAINED IN THE MEMORANDUM OF SETTLEMENT CONCERNING VARIOUS DUTIES AND RATES OF PAY. THE MEMORANDUM WAS SIGNED BY THE PARTIES.

4. IT IS IMPORTANT TO NOTE THAT THE MEMORANDUM INCORPORATED BY REFERENCE ALL THE "TERMS OF THE COLLECTIVE AGREEMENT IN FORCE BETWEEN THE PARTIES AT THE HILLCREST CONVALESCENT HOSPITAL...". ACCORDINGLY THIS WAS NOT THE TYPE OF MEMORANDUM OF SETTLEMENT WHERE IT WAS NECESSARY FOR THE PARTIES TO SUBSEQUENTLY DRAFT A COLLECTIVE AGREEMENT AND THEN AGREE TO THE FORM AND WORDING. ALL THESE MATTERS HAVE BEEN RESOLVED BY THE REFERENCE TO THE COLLECTIVE AGREEMENT AT HILLCREST. IT IS ALSO IMPORTANT TO NOTE THAT PARAGRAPH 4 OF THE MEMORANDUM OF SETTLEMENT REQUIRED A LETTER OF UNDERSTANDING TO BE DRAWN UP WITH RESPECT TO ARTICLE 1.03. SUBSEQUENT EVIDENCE CONFIRMS OUR VIEW THAT THE LETTER OF UNDERSTANDING WAS SEPARATE AND APART FROM THE COLLECTIVE AGREEMENT.

5. WHILE IT WAS ARGUED THAT THE MEMORANDUM OF SETTLEMENT BY ITSELF CONSTITUTED A COLLECTIVE AGREEMENT WE ARE UNABLE TO AGREE WITH THAT SUBMISSION BECAUSE UNDER PARAGRAPH 2 OF THE MEMORANDUM OF SETTLEMENT IT REMAINED FOR THE REPRESENTATIVES TO RECOMMEND COMPLETE ACCEPTANCE TO THEIR PRINCIPALS AND IT IS REASONABLE TO ASSUME THAT IN ORDER TO CONCLUDE THE AGREEMENT THE PRINCIPALS WERE REQUIRED TO INDICATE THEIR ACCEPTANCE.

6. ON NOVEMBER 15, 1971, THE TRADE UNION NOTIFIED MR. GRANT CLARK OF VERSASERVICES LIMITED BY LETTER (EXHIBIT NO. 4) AS FOLLOWS:

MR. GRANT CLARK,
VERSASERVICES LIMITED,
95 BROCKHOUSE ROAD,
TORONTO, ONTARIO.

NOVEMBER 15, 1971.

DEAR MR. CLARK:

RE: VERSASERVICES LIMITED/ONTARIO
CRIPPLED CHILDRENS CENTRE.

THIS IS TO NOTIFY YOU THAT THE CONTRACT HAS BEEN RATIFIED. WOULD YOU KINDLY SEE THAT 'LEAD HAND' IS PUT IN THE CONTRACT.

PLEASE PREPARE A COLLECTIVE AGREEMENT FOR US TO VERIFY.

THE UNION DUES ARE TO BE DEDUCTED FOR THE MONTH OF OCTOBER 1971.

THE SHOP STEWARDS ARE AS FOLLOWS:

MARIA COELHO, FRANCISCO SILVA

YOURS VERY TRULY,

P. MURPHY,
GENERAL PRESIDENT,
C.U.G.E.

THIS LETTER CONSTITUTED AN ACCEPTANCE BY THE TRADE UNION ACCORDING TO THE TERMS OF THE MEMORANDUM OF SETTLEMENT AND IT ONLY REMAINED FOR THE COMPANY TO INDICATE ITS ACCEPTANCE.

7. ON NOVEMBER 18, 1971, VERSASERVICES LIMITED WROTE TO THE TRADE UNION AS FOLLOWS:

NOVEMBER 18, 1971

MR. P. MURPHY,
GENERAL PRESIDENT,
CANADIAN UNION OF GENERAL EMPLOYEES,
81 HAIG AVENUE,
SCARBOROUGH, ONTARIO.

DEAR MR. MURPHY:

RE: ONTARIO CRIPPLED CHILDREN'S CENTRE

ENCLOSED HERewith IS A COPY OF THE NEW COLLECTIVE AGREEMENT THAT WE HAVE DRAWN UP COVERING OUR EMPLOYEES AT THE ABOVE LOCATION.

AFTER YOU HAVE HAD AN OPPORTUNITY TO EXAMINE THE ENCLOSED WOULD YOU PLEASE DROP ME A NOTE WITH YOUR COMMENTS IN ORDER THAT WE CAN PROCEED TO RUN OFF ADDITIONAL COPIES FOR SIGNING.

I AM ALSO ENCLOSING FIVE (5) COPIES OF A LETTER OF UNDERSTANDING, SIGNED BY COMPANY REPRESENTATIVES, CONCERNING THE INTERPRETATION OF ARTICLE 1.03 FROM THE COLLECTIVE AGREEMENT NOW IN EFFECT AT THE HILLCREST CONVALESCENT HOSPITAL. I WILL REQUIRE THREE SIGNED COPIES OF THIS LETTER FOR OUR FILES.

I TRUST THAT YOU WILL FIND THAT BOTH DOCUMENTS ARE IN ORDER.

VERY TRULY YOURS,

VERSAFOOD SERVICES LIMITED

G.E. CLARK
INDUSTRIAL RELATIONS OFFICER.

8. ON DECEMBER 3, 1971, THE TRADE UNION ADVISED VERSASERVICES LIMITED AS FOLLOWS:

MR. G. E. CLARK, INDUSTRIAL RELATIONS,
VERSASERVICE LIMITED,
95 BROCKHOUSE ROAD,
TORONTO, ONTARIO.
DECEMBER 3, 1971.

DEAR MR. CLARK:

RE: ONTARIO CRIPPLED CHILDRENS CENTRE

THE COLLECTIVE AGREEMENT FOR THE ONTARIO CRIPPLED CHILDRENS CENTRE IS ACCEPTABLE TO US. WOULD YOU KINDLY HAVE TWENTY-FIVE TO THIRTY COPIES MADE AND SEND THEM TO US FOR SIGNING.

RE: LETTER OF UNDERSTANDING ARTICLE 1.03

WE ARE PREPARED TO SIGN COPIES OF THIS LETTER OF UNDERSTANDING PROVIDED THE FOLLOWING CHANGES ARE MADE OR PERHAPS IT WAS JUST AN ERROR:

THE INTENT OF ARTICLE 1.03 SHOULD BE UNDERSTOOD TO MEAN: (PERSONS OUTSIDE THE BARGAINING UNIT WILL NOT PERFORM ANY WORK NORMALLY DONE BY MEMBERS OF THE BARGAINING UNIT, EXCEPT FOR THE PURPOSE OF EXPERIMENTATION, INSTRUCTION OR IN AN EMERGENCY. EMPLOYEES WITHIN THE BARGAINING UNIT SHALL NOT BE DISPLACED OR LOSE ANY PART OF HIS REGULAR SCHEDULED HOURS OR OVERTIME). THE INTENT OF THIS ARTICLE WOULD MEAN BY VIRTUE OF THE WORK BEING PERFORMED BY PERSONS OUTSIDE THE BARGAINING UNIT.

THIS IS WHAT WE AGREED TO AT NEGOTIATIONS. IF YOU WILL HAVE COPIES OF THIS MADE WE ARE PREPARED TO SIGN THEM.

THANKING YOU IN REGARDS TO THIS MATTER.

YOURS VERY TRULY,

P. MURPHY,
GENERAL PRESIDENT,
C.U.G.E.

9. THE LETTER OF DECEMBER 3, 1971, CONFIRMED THE ACCEPTANCE BY THE TRADE UNION OF THE COLLECTIVE AGREEMENT AND CONFIRMS THAT THE LETTER

OF UNDERSTANDING WAS SEPARATE FROM THE COLLECTIVE AGREEMENT. WE ARE ALSO OF THE OPINION THAT THE PREPARATION OF THE COLLECTIVE AGREEMENT BY VERSASERVICES LIMITED IN ACCORDANCE WITH THE TERMS OF THE MEMORANDUM OF SETTLEMENT AND THE FORWARDING OF THAT COLLECTIVE AGREEMENT TO THE UNION FOR SIGNATURE IS SUFFICIENT INDICATION IN THE CIRCUMSTANCES OF THIS CASE THAT THE EMPLOYER HAD ACCEPTED THE TERMS OF THE COLLECTIVE AGREEMENT PURSUANT TO PARAGRAPH 2 OF THE MEMORANDUM OF SETTLEMENT.

10. WE CONCLUDE THAT NOTWITHSTANDING THAT THE ACTUAL COLLECTIVE AGREEMENT DOCUMENT WAS NOT SIGNED THAT THERE WAS IN FACT A COLLECTIVE AGREEMENT IN WRITING BETWEEN THE PARTIES WHICH COMPRISED THE FIRST DRAFT AGREEMENT AND THE LETTERS WHICH WE HAVE SET OUT. THIS BOARD HAS LONG HELD THAT A SERIES OF DOCUMENTS IN WRITING SIGNED BY THE PARTIES ARE CAPABLE OF CONSTITUTING A COLLECTIVE AGREEMENT. SEE E.G. OPERATIVE PLASTERERS AND CEMENT MASONS INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, LOCAL 48 V. CRESTILE LIMITED [1967] APRIL OLRB MTHLY. REP. 41 AT 44.

11. ON DECEMBER 21, 1971, VERSASERVICES LIMITED CONFIRMED ITS ACCEPTANCE OF THE COLLECTIVE AGREEMENT BY FORWARDING SIGNED COPIES TO THE UNION, (EXHIBIT NO. 7). VERSASERVICES LIMITED AT THAT TIME, HOWEVER, AS A RESULT OF DISCUSSIONS WITH MR. MURPHY OF THE CANADIAN UNION OF GENERAL EMPLOYEES, MADE A REFERENCE IN ARTICLE 1.03 OF THE SECOND DOCUMENT TO THE LETTER OF UNDERSTANDING. REFERENCE TO THE LETTER OF UNDERSTANDING IN ARTICLE 1.03 IN THAT DOCUMENT, IN OUR VIEW, IS NOT A PART OF THE COLLECTIVE AGREEMENT.

12. ON DECEMBER 29, 1971, MR. MURPHY ADVISED THE COMPANY BY LETTER (EXHIBIT NO. 8) THAT THE SECOND COLLECTIVE AGREEMENT WAS NOT ACCEPTABLE AND INDICATED THAT THE UNION NO LONGER AGREED WITH THE LETTER OF UNDERSTANDING AND CERTAIN ARTICLES UNDER MANAGEMENT FUNCTIONS. MR. MURPHY INFORMED VERSASERVICES LIMITED THAT THE TRADE UNION HAD MADE A REQUEST FOR A CONCILIATION OFFICER.

13. THE REFERENCE IN ARTICLE 1.03 TO THE LETTER OF UNDERSTANDING WHICH WAS CONTAINED IN THE SECOND DOCUMENT FORWARDED ON DECEMBER 21, DID NOT DETRACT FROM THE COLLECTIVE AGREEMENT WHICH HAD BEEN ENTERED INTO BETWEEN THE PARTIES, NOR DID THE REFUSAL BY THE TRADE UNION TO SIGN THE SECOND DOCUMENT DETRACT FROM THE COLLECTIVE AGREEMENT WHICH HAD ALREADY BEEN ACCEPTED BY THE PARTIES. THE ONLY ISSUE BETWEEN THE PARTIES THAT NOW REMAINS TO BE RESOLVED CONCERNS THE LETTER OF UNDERSTANDING. THAT LETTER IS NOT PART OF THE COLLECTIVE AGREEMENT; IT WAS NOT A CONDITION PRECEDENT TO THE SIGNING OF A COLLECTIVE AGREEMENT; AND IT DOES NOT AFFECT THE EXISTENCE OF THE COLLECTIVE AGREEMENT WHICH WAS AGREED UPON.

14. SECTION 15(1) OF THE LABOUR RELATIONS ACT PROVIDES AS FOLLOWS:

15.-(1) WHERE NOTICE HAS BEEN GIVEN UNDER SECTION 13 OR 45, THE MINISTER, UPON THE REQUEST OF EITHER PARTY, SHALL APPOINT A CONCILIATION OFFICER TO CONFER WITH THE PARTIES AND ENDEAVOUR TO EFFECT A COLLECTIVE AGREEMENT.

SINCE THE PURPOSE OF SECTION 15(1) IS TO HAVE A CONCILIATION OFFICER ENDEAVOUR TO AFFECT A COLLECTIVE AGREEMENT THEN IN OUR VIEW THERE WOULD BE NO USEFUL PURPOSE IN APPOINTING A CONCILIATION OFFICE BECAUSE THE PARTIES HAVE ALREADY CONCLUDED A COLLECTIVE AGREEMENT.

15. ACCORDINGLY WE RESPECTFULLY REPORT TO THE MINISTER OF LABOUR THAT THERE WOULD BE NO USEFUL PURPOSE IN APPOINTING A CONCILIATION OFFICER AND THAT THE MINISTER OF LABOUR HAS NO AUTHORITY UNDER SECTION 15(1) TO NOW APPOINT A CONCILIATION OFFICER IN THIS MATTER.

1783-71-R: CANADIAN UNION OF GENERAL EMPLOYEES (C.U.G.E.) (APPLICANT)
V. TEMPLETON SUR-LOK LIMITED (RESPONDENT) V. TEXTILE WORKERS UNION OF
AMERICA, CLC, AFL-CIO (INTERVENER).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS F. W. MURRAY AND P. J. O'KEEFE.

DECISION OF THE BOARD: APRIL 12, 1972.

1. THE APPLICANT APPLIED TO BE CERTIFIED FOR CERTAIN EMPLOYEES OF THE RESPONDENT ON MARCH 27, 1972 AND REQUESTED THAT A PRE-HEARING REPRESENTATION VOTE BE TAKEN.

2. THE INTERVENER INTERVENED IN THIS APPLICATION ON APRIL 5, 1972 AND BY WAY OF AN APPLICATION FOR CERTIFICATION BY INTERVENER ALSO REQUESTED THAT A PRE-HEARING REPRESENTATION VOTE BE TAKEN AMONG THE EMPLOYEES OF THE RESPONDENT WITH WHOM WE ARE HERE CONCERNED.

3. IT APPEARS TO THE BOARD ON AN EXAMINATION OF THE RECORDS OF THE APPLICANT AND THE RECORDS OF THE RESPONDENT THAT NOT LESS THAN THIRTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE VOTING CONSTITUENCY HEREINAFTER DESCRIBED WERE MEMBERS OF THE APPLICANT AT THE TIME THE APPLICATION WAS MADE.

4. ALTHOUGH THE INTERVENER FILED MEMBERSHIP EVIDENCE ON BEHALF OF 25 EMPLOYEES OF THE RESPONDENT, ALL THE MEMBERSHIP DOCUMENTS SUBMITTED BY THE INTERVENER WERE DATED SUBSEQUENT TO MARCH 27, 1972, THE

DATE THE APPLICATION WAS MADE. IT THEREFORE APPEARS TO THE BOARD ON AN EXAMINATION OF THE RECORDS OF THE INTERVENER AND THE RECORDS OF THE RESPONDENT THAT LESS THAN THIRTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE VOTING CONSTITUENCY HEREINAFTER DESCRIBED WERE MEMBERS OF THE INTERVENER AT THE TIME THE APPLICATION WAS MADE.

5. SINCE THE INTERVENER'S MEMBERSHIP EVIDENCE DOES NOT CONFORM TO THE REQUIREMENTS OF SECTION 8(2) OF THE LABOUR RELATIONS ACT, THE BOARD FINDS THAT THE INTERVENER HAS FAILED TO MAKE A PRIMA FACIE CASE FOR THE REMEDY REQUESTED AND THE BOARD, PURSUANT TO THE PROVISIONS OF SECTION 46 OF THE BOARD'S RULES OF PROCEDURE, DISMISSES THE INTERVENER'S APPLICATION FOR CERTIFICATION.

6. FOR THE PURPOSES OF CLARITY, THE INTERVENER MAY CONTINUE TO PARTICIPATE IN THESE PROCEEDINGS AS AN INTERESTED PARTY.

7. THE BOARD DIRECTS THAT A PRE-HEARING REPRESENTATION VOTE BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN THE FOLLOWING VOTING CONSTITUENCY:

ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE AND SALES STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD.

8. ALL EMPLOYEES OF THE RESPONDENT IN THE VOTING CONSTITUENCY ON THE 6TH DAY OF APRIL, 1972 WHO HAVE NOT VOLUNTARILY TERMINATED THEIR EMPLOYMENT OR WHO HAVE NOT BEEN DISCHARGED FOR CAUSE BETWEEN THE 6TH DAY OF APRIL, 1972 AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

9. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BE REPRESENTED BY THE APPLICANT IN THEIR EMPLOYMENT RELATIONS WITH THE RESPONDENT.

10. THE MATTER IS REFERRED TO THE REGISTRAR.

564-71-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) v. SUNRISE PAVING & CONSTRUCTION CO. LTD. (RESPONDENT) v. OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, LOCAL UNION 172 (INTERVENER).

BEFORE: R.A. FURNESS, VICE CHAIRMAN AND BOARD MEMBERS F.W. MURRAY AND P.J. O'KEEFE.

APPEARANCES AT THE HEARING: A.M. MINSKY, BRIAN YANDELL AND TONY SPADA FOR THE APPLICANT; R.D. PERKINS FOR THE RESPONDENT; W.S. PUNNETT AND A. MARIANO FOR OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, LOCAL UNION 172.

DECISION OF THE BOARD:

APRIL 12, 1972.

1. AT THE CONTINUATION OF HEARING IN THIS MATTER COUNSEL FOR OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, LOCAL UNION 172 (HEREINAFTER REFERRED TO AS "LOCAL UNION 172") AND THE RESPONDENT MADE MOTIONS BEFORE THE BOARD. THE BOARD ENTERTAINED THESE MOTIONS AND ISSUED ITS DECISION WITH RESPECT TO THESE MOTIONS AT THE HEARING IN THIS MATTER ON APRIL 7, 1972. THESE DECISIONS OF THE BOARD FOLLOW BELOW.

2. IN A DECISION DATED MARCH 9, 1972 THE BOARD DISMISSED THE INTERVENTION OF LOCAL UNION 172 AND HELD THAT LOCAL UNION 172 DID NOT HAVE STATUS TO INTERVENE IN THIS PROCEEDING. AT THE COMMENCEMENT OF THE HEARING IN THIS MATTER ON APRIL 7, 1972, COUNSEL FOR LOCAL UNION 172 SOUGHT TO ADDUCE EVIDENCE CONCERNING THE ALLEGATIONS OF IMPROPER OR IRREGULAR CONDUCT WHICH IT HAD FILED IN THIS MATTER ON JUNE 22, 1971. IN SUPPORT OF THE POSITION OF LOCAL UNION 172 ITS COUNSEL ARGUED THAT NOTWITHSTANDING THE DISMISSAL OF ITS INTERVENTION IT OUGHT TO BE PERMITTED TO ADDUCE EVIDENCE CONCERNING THE ALLEGATIONS OF IMPROPER OR IRREGULAR CONDUCT EITHER IN THE ROLE OF AN AMICUS CURIAE (LATER CHANGED TO AMICUS TRIBUNAE) OR AS THE REPRESENTATIVE OF THREE EMPLOYEES (THE BOARD WAS NOT INFORMED BY WHOM THESE THREE EMPLOYEES WERE EMPLOYED OR WHEN THEY COMMENCED THEIR EMPLOYMENT).

3. IT HAS NOT BEEN ALLEGED THAT THE EMPLOYEES AFFECTED BY THIS APPLICATION FOR CERTIFICATION HAVE NOT RECEIVED NOTICE THEREOF OR THAT THEY HAVE FILED ALLEGATIONS OF IMPROPER OR IRREGULAR CONDUCT IN CONNECTION WITH THIS APPLICATION. LOCAL UNION 172 INTERVENED IN THIS PROCEEDING AND CLAIMED TO BE THE BARGAINING AGENT OF EMPLOYEES AFFECTED BY THIS APPLICATION. THE BOARD IN ITS DECISION DATED MARCH 9, 1972 HAS FOUND THAT LOCAL UNION 172 WAS NOT THE BARGAINING AGENT OF SUCH EMPLOYEES. MOREOVER, LOCAL UNION 172 HAS NOT FILED ANY EVIDENCE OF MEMBERSHIP WITH RESPECT TO ANY EMPLOYEES OF THE RESPONDENT.

4. THE BOARD HAS CONSIDERED ALL OF THE REPRESENTATIONS OF THE COUNSEL BEFORE THE BOARD AND FINDS THAT THERE IS NO BASIS FOR PERMITTING LOCAL UNION 172 TO APPEAR AND PARTICIPATE IN THE ROLE OF AMICUS TRIBUNAE IN THIS PROCEEDING. IN ADDITION, LOCAL UNION 172 HAS NOT ADDUCED ANY EVIDENCE BEFORE THE BOARD THAT IT REPRESENTS ANY EMPLOYEES OF THE RESPONDENT WHO ARE OR WERE MEMBERS OF LOCAL UNION 172.

5. WITH REGARD TO THE APPARENT CLAIM OF COUNSEL FOR LOCAL UNION

172 TO REPRESENT THREE EMPLOYEES, THE BOARD FINDS THAT NO EMPLOYEES HAVE FILED ALLEGATIONS OF IMPROPER OR IRREGULAR CONDUCT WITH THE BOARD AND THAT HAVING REGARD TO THE PROVISIONS OF SECTION 47 OF THE BOARD'S RULES OF PROCEDURE, THE THREE EMPLOYEES ARE NOT PERMITTED TO FILE AT THIS LATE DATE ALLEGATIONS OF IMPROPER OR IRREGULAR CONDUCT (ALMOST TEN MONTHS AFTER THE FILING OF THIS APPLICATION FOR CERTIFICATION). REFERENCE IS MADE TO THE UNIQUE FORMING LIMITED CASE, OLRB MONTHLY REPORT AUG. 1970, P. 568.

6. AFTER THE BOARD ANNOUNCED THE DECISION REFERRED TO ABOVE, COUNSEL FOR THE RESPONDENT ASKED THE BOARD TO RECONSIDER ITS DECISION IN THIS MATTER DATED MARCH 9, 1972. THE BOARD HAS CONSIDERED THIS REQUEST OF COUNSEL FOR THE RESPONDENT AND FINDS NO REASON TO RECONSIDER ITS DECISION IN THIS MATTER DATED MARCH 9, 1972. THE REQUEST OF COUNSEL FOR THE RESPONDENT IS ACCORDINGLY DENIED.

7. COUNSEL FOR THE RESPONDENT ALSO REQUESTED AN OPPORTUNITY TO ADDUCE EVIDENCE WITH RESPECT TO THE ALLEGATIONS OF IMPROPER OR IRREGULAR CONDUCT FILED BY LOCAL UNION 172 AGAINST THE APPLICANT. COUNSEL FOR THE RESPONDENT STATED THAT THE RESPONDENT DID NOT ITSELF DESIRE TO MAKE ALLEGATIONS OF IMPROPER OR IRREGULAR CONDUCT AGAINST THE APPLICANT BUT RATHER WISHED TO CONFER WITH LOCAL UNION 172 AND ITSELF ADDUCE EVIDENCE ON THE ALLEGATIONS OF IMPROPER OR IRREGULAR CONDUCT FILED BY LOCAL UNION 172. THE BOARD HAS CAREFULLY CONSIDERED THE REQUEST MADE BY COUNSEL FOR THE RESPONDENT AND HAS REACHED THE CONCLUSION THAT SUCH REQUEST MUST BE DENIED. REFERENCE IS MADE TO SECTION 47 OF THE BOARD'S RULES OF PROCEDURE.

8. HAVING REGARD TO THE REPRESENTATIONS BEFORE THE BOARD AND IN THE CIRCUMSTANCES OF THIS APPLICATION THE BOARD FURTHER FINDS THAT ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN METROPOLITAN TORONTO, THE RÉGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN AND CONSTRUCTION LABOURERS ENGAGED IN BUILDING PROJECTS, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

FOR THE PURPOSES OF CLARITY AND HAVING REGARD TO THE REPRESENTATIONS OF THE PARTIES THE BOARD DECLARES THAT THE ABOVE BARGAINING UNIT INCLUDES THE CLASSIFICATION OF FORM SETTER BUT DOES NOT INCLUDE THE CLASSIFICATION OF CEMENT FINISHER.

9. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN SIXTY-FIVE PER CENT OF THE EMPLOYEES OF THE

RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON JULY 2, 1971 THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 92(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

10. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

51-70-R: TEXTILE WORKERS UNION OF AMERICA, AFL-CIO-CLC (APPLICANT) V. FEDERAL PACKAGING AND PARTITION COMPANY LIMITED (RESPONDENT) V. FEDERAL PACKAGING EMPLOYEES ASSOCIATION (INTERVENER) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS P. J. O'KEEFFE AND J.E.C. ROBINSON, Q.C.

APPEARANCES AT THE HEARING: T. E. ARMSTRONG AND C. CLARK FOR THE APPLICANT; MICHAEL GORDON AND LES BARRETT FOR THE RESPONDENT; W. G. POSTHUMUS AND MRS. HACHE FOR THE INTERVENER AND OBJECTORS.

DECISION OF J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBER P. J. O'KEEFFE: APRIL 14, 1972.

1. THE APPLICANT APPLIED TO THE BOARD ON FEBRUARY 26, 1971 FOR CERTIFICATION FOR A UNIT OF EMPLOYEES OF THE RESPONDENT AT ITS PLANT IN AJAX. THE RESPONDENT AND THE INTERVENER (HEREINAFTER REFERRED TO AS THE ASSOCIATION) ARE PARTIES TO AN AGREEMENT DATED FEBRUARY 28, 1970. BY THIS AGREEMENT THE RESPONDENT RECOGNIZES THE ASSOCIATION AS BARGAINING AGENT FOR ALL OF ITS EMPLOYEES AT ITS AJAX PLANT, SAVE AND EXCEPT FOREMEN, THOSE ABOVE THE RANK OF FOREMAN, SALES AND OFFICE STAFF, AND STUDENTS EMPLOYED FOR THE SCHOOL VACATION PERIOD. THE DURATION CLAUSE OF THE SAID AGREEMENT PROVIDES THAT THE AGREEMENT IS TO REMAIN IN EFFECT FROM MARCH 1, 1970 UNTIL FEBRUARY 29, 1972 AND FROM YEAR TO YEAR THEREAFTER SUBJECT TO NOTICE.

2. THE PARTIES AGREED UPON THE FOLLOWING STATEMENT OF FACTS- (1) ANNE JOHNSTON AND GLADYS DALE WERE DUES PAYING MEMBERS OF THE ASSOCIATION SINCE ITS INCEPTION TO THE PRESENT TIME. (2) ANNE JOHNSTON WAS AN EXECUTIVE OFFICER OF THE ASSOCIATION FOR EACH OF THE YEARS 1966, 1967, 1968 AND WAS REPLACED IN OCTOBER OF 1969. FOR SOME PORTION OF THAT PERIOD SHE WAS VICE-PRESIDENT AND PRESIDENT OF THE ASSOCIATION. DURING THE ENTIRE PERIOD SHE WAS A MEMBER OF THE BARGAINING COMMITTEE. (3) NEITHER ANNE JOHNSTON NOR GLADYS DALE WERE MEMBERS OF THE BARGAINING COMMITTEE WHEN THE CURRENT AGREEMENT BETWEEN THE RESPONDENT AND THE ASSOCIATION WAS NEGOTIATED. (4) ANNE

JOHNSTON'S DUTIES AS SET OUT IN THE REPORT OF THE EXAMINER DATED MAY 18, 1971 HAVE NOT CHANGED THROUGHOUT THE PERIOD FROM 1966 TO THE PRESENT. (5) THE PLANT MANAGER MR. BARRETT DID NOT REGARD ANNE JOHNSTON OR GLADYS DALE AS BEING MEMBERS OF MANAGEMENT AND NEITHER ANNE JOHNSTON NOR GLADYS DALE REGARDED THEMSELVES AS BEING MEMBERS OF MANAGEMENT.

3. COUNSEL FOR THE APPLICANT SUBMITS THAT HAVING REGARD TO THE FACT THAT BOTH ANNE JOHNSTON AND GLADYS DALE, WHO THE BOARD HAS FOUND EXERCISE MANAGERIAL FUNCTIONS, HAVE BEEN ACCEPTED INTO MEMBERSHIP IN THE ASSOCIATION, THE ASSOCIATION IS NOT A TRADE UNION AS DEFINED IN SECTION 1(1)(N) OF THE ACT. COUNSEL FOR THE APPLICANT FURTHER SUBMIT THAT THE ACTIVITIES OF ANNE JOHNSTON IN THE ADMINISTRATION OF THE ASSOCIATION, I.E. HOLDING EXECUTIVE OFFICES AND BEING A MEMBER OF THE ASSOCIATION BARGAINING COMMITTEE, FALL WITHIN THE PURVIEW OF SECTION 12 AND SECTION 40 OF THE ACT. COUNSEL FOR THE APPLICANT ARGUES THAT ON THE BASIS OF BOTH SUBMISSIONS THE AGREEMENT DATED FEBRUARY 28, 1970 BETWEEN THE RESPONDENT AND THE ASSOCIATION IS NOT A COLLECTIVE AGREEMENT WITHIN THE MEANING OF SECTION 1(1)(E) OF THE ACT AND ACCORDINGLY THE SAID AGREEMENT IS NOT A BAR TO THE INSTANT APPLICATION.

4. COUNSEL FOR THE RESPONDENT AND COUNSEL FOR THE ASSOCIATION SUBMIT THAT SINCE NEITHER ANNE JOHNSTON NOR GLADYS DALE REGARDED THEMSELVES AS BEING MEMBERS OF MANAGEMENT NOR DID THE RESPONDENT LOOK UPON THEM AS BEING MEMBERS OF MANAGEMENT UNTIL THE BOARD SO DETERMINED IN ITS DECISION OF JULY 30, 1971, IT CANNOT BE SAID THAT THERE WAS ANY CONFLICT OF INTEREST OR LOYALTY ON THE PART OF THE TWO WOMEN VIS-A-VIS THEIR EMPLOYER AND THE ASSOCIATION. COUNSEL ARGUE THAT IN THESE CIRCUMSTANCES THE FACT OF THEIR MEMBERSHIP IN THE ASSOCIATION DOES NOT IMPUGN THE ASSOCIATION'S STATUS AS A TRADE UNION AND FURTHER THAT ANNE JOHNSTON'S ACTIVITIES IN THE ASSOCIATION DO NOT FALL WITHIN THE MISCHIEF CONTEMPLATED BY SECTION 12 AND SECTION 40 OF THE ACT. COUNSEL FOR THE RESPONDENT AND COUNSEL FOR THE ASSOCIATION ACCORDINGLY ARGUE THAT THE AGREEMENT OF FEBRUARY 28, 1970 IS A VALID SUBSISTING COLLECTIVE AGREEMENT WHICH IS A BAR TO THE INSTANT APPLICATION. COUNSEL FOR ALL PARTIES CITED DECISIONS OF THE BOARD IN SUPPORT OF THEIR RESPECTIVE POSITIONS.

5. THE BOARD IN ITS DECISION IN THIS MATTER DATED JULY 30, 1971 (SEE OLRB M.R. JULY 1971 P. 448) BASED ON THE REPORT OF THE EXAMINER DATED MAY 18, 1971 FOUND THAT ANNE JOHNSTON AND GLADYS DALE, BOTH OF WHOM ARE CLASSIFIED AS FORELADIES, EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE ACT. SINCE IN THE STATEMENT OF FACTS SET OUT IN PARAGRAPH 2 THE PARTIES AGREED THAT ANNE JOHNSTON'S DUTIES HAVE NOT CHANGED FROM 1966 TO THE PRESENT, THE BOARD FINDS THAT SHE WAS A MEMBER OF MANAGEMENT OF THE RESPONDENT DURING THE PERIOD WHEN SHE WAS PRESIDENT AND VICE-PRESIDENT OF THE ASSOCIATION AND A

MEMBER OF THE ASSOCIATION'S BARGAINING COMMITTEE. IN THESE CIRCUMSTANCES, AND NOTWITHSTANDING THE MANNER IN WHICH ANNE JOHNSTON REGARDED HERSELF OR THE MANNER IN WHICH THE PLANT MANAGER MR. BARRETT REGARDED HER, THE BOARD FURTHER FINDS THAT ANNE JOHNSTON'S ACTIVITIES CONSTITUTE EMPLOYER PARTICIPATION IN THE ADMINISTRATION OF THE ASSOCIATION WITHIN THE MEANING OF SECTIONS 12 AND 40 OF THE ACT. HAVING REGARD TO THE PROVISIONS OF SECTION 40, THE BOARD FURTHER FINDS THAT THE FEBRUARY 28, 1970 AGREEMENT BETWEEN THE RESPONDENT AND THE ASSOCIATION CANNOT BE DEEMED TO BE A COLLECTIVE AGREEMENT FOR PURPOSES OF THE ACT AND THEREFORE THAT ANNE JOHNSTON'S ACTIVITIES CONSTITUTE EMPLOYER PARTICIPATION AS CONTEMPLATED BY SECTION 12 OF THE ACT, THE ASSOCIATION IS NOT AN ORGANIZATION WHICH THE BOARD COULD CERTIFY. WE ACCORDINGLY ARE NOT ABLE TO ORDER A TWO-WAY REPRESENTATION VOTE AFFORDING TO THE EMPLOYEES OF THE RESPONDENT AN OPPORTUNITY TO EXPRESS THEIR CHOICE AS BETWEEN THE ASSOCIATION AND THE APPLICANT, FOR BY SO DOING, THE BOARD, IN EFFECT, WOULD BE CONFERRING UPON THE ASSOCIATION THE STATUS OF A CERTIFIABLE ORGANIZATION (SEE NORFISH LIMITED CASE OLRB M.R. SEPTEMBER 1965 P. 414). IN LIGHT OF THE ABOVE FINDINGS, IT IS NOT NECESSARY FOR THE BOARD TO DEAL WITH THE FIRST SUBMISSION OF COUNSEL FOR THE APPLICANT.

6. THE BOARD FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT ITS PLANT IN AJAX, SAVE AND EXCEPT FOREMEN AND FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN AND FORELADY, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

7. THERE ARE 70 PERSONS ON THE LIST OF EMPLOYEES FILED BY THE RESPONDENT WHO ARE INCLUDED IN THE BARGAINING UNIT FOR PURPOSES OF THE COUNT. THE APPLICANT HAS FILED EVIDENCE OF MEMBERSHIP FOR 53 PERSONS, 50 OF WHOSE NAMES CORRESPOND WITH NAMES APPEARING ON THE RESPONDENT'S LIST. THERE WERE ALSO FILED BY THE TERMINAL DATE TWO TYPE-WRITTEN STATEMENTS OF DESIRE BEARING THE SIGNATURES OF 33 PERSONS PURPORTING TO BE EMPLOYEES OF THE RESPONDENT EXPRESSING OPPOSITION TO THE APPLICATION. OF THAT NUMBER 14 WHO ARE INCLUDED IN THE BARGAINING UNIT FOR PURPOSES OF THE COUNT ARE CLAIMED IN MEMBERSHIP BY THE APPLICANT UNION. ACCORDINGLY, IF THE BOARD WERE TO GIVE WEIGHT TO THE STATEMENTS OF DESIRE THE APPLICANT WOULD HAVE UNQUALIFIED EVIDENCE OF MEMBERSHIP FOR LESS THAN THE 65 PER CENT REQUIRED FOR OUTRIGHT CERTIFICATION. THE BOARD ACCORDINGLY INQUIRED INTO THE ORIGINATION, PREPARATION AND CIRCULATION OF THE SAID STATEMENTS OF DESIRE.

8. THE EVIDENCE IS THAT WHEN THE RESPONDENT RECEIVED NOTICE OF THE INSTANT APPLICATION FOR CERTIFICATION, MR. BARRETT, THE PLANT MANAGER CALLED JUDY HACHE, LINDA HOLTER AND JOE HILL, WHO ARE THE THREE CURRENT EXECUTIVE OFFICERS OF THE ASSOCIATION, TO HIS OFFICE AND READ TO THEM THE FOLLOWING STATEMENT WHICH WAS FILED IN EVIDENCE AS AN EXHIBIT:

I UNDERSTAND THAT THERE IS A PROBLEM IN THE PLANT AND THAT THERE IS AN OUTSIDE UNION TRYING TO ORGANIZE THE EMPLOYEES.

I THINK YOU SHOULD KNOW THE COMPANY'S POSITION.

WE HAVE A VALID COLLECTIVE AGREEMENT NEGOTIATED WITH THE REPRESENTATIVES OF YOUR ASSOCIATION WHICH REPRESENTS OUR EMPLOYEES. WE ARE BOUND TO HONOUR THAT AGREEMENT AND UNTIL SUCH TIME AS SOME OTHER LEGAL AUTHORITY TELLS US THAT WE MUST NOT DO SO, THE COMPANY WILL HONOUR ITS LEGAL OBLIGATIONS.

THE COMPANY RECOGNIZES, AS DOES ITS DOCUMENT OF AGREEMENT WITH THE ASSOCIATION, ALL EMPLOYEES' RIGHTS TO JOIN OR NOT TO JOIN, THE UNION OF HIS CHOICE, ACCORDINGLY, WE WILL NOT ATTEMPT TO INTERFERE WITH THE EXERCISE OF THAT RIGHT.

HOWEVER, JUST AS WE INTEND TO HONOUR OUR CONTRACTUAL OBLIGATIONS TO YOUR ASSOCIATIONS, SO DO WE EXPECT YOU TO HONOUR THESE OBLIGATIONS AND TRUST THAT YOU WILL MAKE EVERY EFFORT TO ENSURE THAT OUR AGREEMENT WITH YOU REMAINS IN FULL FORCE AND EFFECT UNTIL FEBRUARY 29, 1972.

IF IT IS NECESSARY FOR YOU TO OBTAIN LEGAL ADVICE IN ORDER TO ENSURE THAT YOUR ASSOCIATION'S SIDE OF THE CONTRACT IS HONOURED, WE EXPECT YOU TO DO SO.

THE COMPANY CANNOT AND WILL NOT BECOME INVOLVED IN ANY DISPUTE BETWEEN TWO UNIONS EXCEPT INSOFAR AS THE PROTECTION OF ITS RIGHTS AT LAW REQUIRE IT TO DO SO.

IN VIEW OF THE PROVISIONS OF THE LABOUR RELATIONS ACT AND ON THE ADVICE OF OUR LAWYER, I REGRET TO ADVISE YOU THAT IT WILL NOT BE POSSIBLE FOR THE COMPANY TO GRANT ANY REQUEST MADE BY THE ASSOCIATION UNDER THE PROVISION 3.04 OF THE COLLECTIVE AGREEMENT UNTIL THE PRESENT UNREST HAS SUBSIDED.

I CANNOT ADVISE YOU OF THE NAME OF A LAWYER WHO MAY ACT FOR YOUR ASSOCIATION, BUT I TRUST YOU WILL OBTAIN ONE IN ORDER TO ENSURE THAT THE CONTRACT IS PROTECTED.

9. FOLLOWING THE MEETING WITH MR. BARRETT, JUDY HACHE RETAINED A LAWYER WHO PREPARED THE STATEMENTS OF DESIRE. THE EXECUTIVE OF THE ASSOCIATION POSTED A NOTICE ON THE BULLETIN BOARD IN THE LUNCH ROOM OF THE RESPONDENT CALLING A MEETING OF THE ASSOCIATION ON THE MORNING OF SATURDAY, MARCH 6, 1971. WE WOULD MENTION THAT ARTICLE XVIII OF THE AGREEMENT BETWEEN THE RESPONDENT AND THE ASSOCIATION MAKES PROVISION FOR THE POSTING OF NOTICES IN THE PLANT BY THE ASSOCIATION PROVIDED SUCH NOTICES ARE FIRST SUBMITTED TO MANAGEMENT FOR APPROVAL. THE RESPONDENT GAVE ITS APPROVAL TO THE POSTING OF THE NOTICE OF THE MEETING. THE EVIDENCE IS UNCLEAR AS TO WHAT THE NOTICE STATED AS TO THE PURPOSE OF THE MEETING. IT WOULD APPEAR, HOWEVER, THAT THE NOTICE INDICATED THAT ONE OF THE PURPOSES OF THE MEETING WAS TO DISCUSS THE ASSOCIATION'S AGREEMENT WITH THE RESPONDENT. AT THE MEETING OF MARCH 6, 1971 JUDY HACHE READ A STATEMENT WHICH SHE HAD PREPARED TOGETHER WITH THE STATEMENT WHICH MR. BARRETT HAD PREVIOUSLY READ TO THE EXECUTIVE OF THE ASSOCIATION. MRS. HACHE'S STATEMENT, WHICH WAS FILED IN EVIDENCE AS AN EXHIBIT, READS:

EMPLOYMENT IS AT A LOW EBB. THIS IS OBVIOUS AS WE ARE FEELING THE STRAIN AT OUR OWN FACTORY. UNFORTUNATELY EIGHT WOMEN HAVE BEEN LAID OFF ALREADY. THERE IS A POSSIBILITY OF A FURTHER LAY-OFF IN THE VERY NEAR FUTURE IF BUSINESS DOES NOT IMPROVE.

AS YOU KNOW, THE TEXTILE WORKERS UNION OF AMERICA HAS APPLIED FOR CERTIFICATION. IN ORDER TO BE CERTIFIED THE UNION WILL HAVE TO OBTAIN AN ORDER OF DE-CERTIFICATION AGAINST THE FEDERAL PACKAGING EMPLOYEES ASSOCIATION.

THIS MAY OF COURSE MEAN THAT THEY MAY MAKE AN ATTACK DIRECTLY ON THE ASSOCIATION EXECUTIVE MEMBERS. GRANTED WE MAY NOT HAVE DONE ALL THAT WE SHOULD HAVE, BUT AS YOU KNOW NOT ONE OF US HAD EVER HAD ANY EXPERIENCE OF THIS TYPE BEFORE. WE WERE ELECTED BY THE MEMBERS OF THIS ASSOCIATION AND ACCORDING TO THE CONTRACT, HAD THE RIGHT TO MAKE DECISIONS ON YOUR BEHALF. THE MAIN COMPLAINT AGAINST THE ASSOCIATION IS THAT WE DID NOT HAVE A GENERAL MEETING WHEN WE WERE NEGOTIATING THE NEW CONTRACT.

AS YOU KNOW, WE TOOK OFFICE IN LATE OCTOBER AND AT THAT TIME WE FELT THE NEED FOR A CLOSER RELATIONSHIP AMONGST THE EMPLOYEES, SO IN THREE WEEKS THE ASSOCIATION EXECUTIVE ARRANGED A CHRISTMAS

BANQUET FOR YOUR ENJOYMENT. ALSO IN THE PAST, THE CHILDREN'S PARTY WAS ALWAYS HELD IN THE PLANT. THE MANAGEMENT DONATED FUNDS TO RENT A HALL FOR THE KIDS PARTY AND WE WERE ABLE TO PUT FORTH A BETTER PARTY FOR THE CHILDREN IN MUCH NICER SURROUNDINGS, JUST TWO WEEKS AFTER THE BANQUET. BY JANUARY 1ST, OUR FUNDS WERE QUITE LOW. AT THE END OF JANUARY NEGOTIATIONS FOR THE NEW CONTRACT WERE STARTED. BEING ON THE ASSOCIATION A SHORT TIME, NEGOTIATION PROCEDURES WERE FOLLOWED UP IN THE SAME MANNER ACCEPTED BY THE EMPLOYEES IN THE PAST.

AT THIS TIME NO SUGGESTIONS WERE MADE FOR A GENERAL MEETING. RECEIVING COMPLIMENTS AND GOOD COMMENTS ABOUT THE CONTRACT INDICATED TO US THAT WE HAD NEGOTIATED A GOOD CONTRACT. WE FELT THE MEMBERSHIP WAS BEHIND US AND SUPPORTED OUR EFFORTS OF NEGOTIATIONS.

ALL TIME CLOCK EMPLOYEES HAVE SIGNED AN APPLICATION FOR MEMBERSHIP INTO THE ASSOCIATION AND HAS PAID AN INITIATION FEE OF \$1.00, AND THROUGH THE ASSOCIATION AND THEIR EFFORTS HAVE ENTERED INTO A CONTRACTUAL AGREEMENT WITH FEDERAL PACKAGING. ANY ATTEMPT NOW TO SWING THE SUPPORT FOR ANOTHER UNION MIGHT WELL INTERFERE WITH THE OBLIGATIONS THAT THE MEMBERS NOW HAVE UNDER THE PRESENT CONTRACT WITH OUR EMPLOYER. THEREFORE WE WERE FORCED TO SEEK LEGAL ADVICE IN ORDER TO PROTECT THE RIGHTS OF THE ASSOCIATION AND ALSO TO AVOID RUNNING THE RISK OF TAKING THE ASSOCIATION AND ITS MEMBERS INTO A BREACH OF CONTRACT SITUATION.

AT THIS TIME I WOULD LIKE TO READ THE STATEMENT MR. BARRETT MADE TO THE EXECUTIVE.

OUR LAWYER, MR. POSTHUMUS IS PREPARED TO DISCUSS VARIOUS ASPECTS OF THE LABOUR RELATIONS ACT WITH YOU AND WILL BRIEFLY ADVISE YOU OF YOUR LABOUR RIGHTS AND OBLIGATIONS AND DUTIES UNDER THE LABOUR RELATIONS ACT.

10. AFTER THE READING OF THE TWO STATEMENTS THERE WAS SOME DISCUSSION AMONGST THE EMPLOYEES, FOLLOWING WHICH MOST OF THE PERSONS WHOSE SIGNATURES APPEAR ON THE STATEMENTS OF DESIRE SIGNED THEIR NAMES.

THE REMAINING SIGNATURES WERE SECURED AT THE HOMES OF THE EMPLOYEES OR AT OTHER LOCATIONS OUTSIDE THE PLANT. BOTH ANNE JOHNSTON AND GLADYS DALE WERE IN ATTENDANCE AT THE MARCH 6TH MEETING AND BOTH SIGNED ONE OF THE STATEMENTS.

11. IN DETERMINING THE WEIGHT THAT CAN BE ACCORDED TO THE STATEMENTS OF DESIRE, WE NOTE THAT ANNE JOHNSTON AND GLADYS DALE, BOTH OF WHOM THE BOARD HAS FOUND EXERCISE MANAGERIAL FUNCTIONS, WERE IN ATTENDANCE AT THE MEETING OF MARCH 6TH, WHEN MOST OF THE SIGNATURES WERE SECURED ON THE STATEMENTS OF DESIRE. MOREOVER, BOTH OF THEM SIGNED THE SAID STATEMENTS EXPRESSING OPPOSITION TO THE INSTANT APPLICATION. HAVING REGARD TO OUR FINDINGS OF FACT RELATING TO THE DUTIES AND RESPONSIBILITIES OF MRS. JOHNSTON AND MRS. DALE, BASED ON THE REPORT OF THE EXAMINER, AS SET OUT IN PARAGRAPH 15 OF THE BOARD'S DECISION OF JULY 30, 1971, WE ARE SATISFIED THAT THE FEMALE EMPLOYEES OF THE RESPONDENT WOULD LOOK UPON THE TWO FORELADIES AS BEING MEMBERS OF MANAGEMENT. ALTHOUGH, ACCORDING TO THE EVIDENCE, NEITHER MRS. JOHNSTON NOR MRS. DALE ACTIVELY PARTICIPATED IN THE MEETING, THE EMPLOYEES IN ATTENDANCE UNDOUBTEDLY WERE AWARE OF THEIR PRESENCE. IN THESE CIRCUMSTANCES, THE EMPLOYEES IN ATTENDANCE AT THE MEETING WOULD HAVE JUSTIFIABLE REASON TO BELIEVE THAT MANAGEMENT WOULD HAVE KNOWLEDGE AS TO WHETHER OR NOT THEY SIGNED THE STATEMENTS OF DESIRE. AS THE BOARD HAS STATED IN MANY DECISIONS, BECAUSE OF THE RESPONSIVE NATURE OF THE EMPLOYER-EMPLOYEE RELATIONSHIP, THERE IS A NATURAL DESIRE ON THE PART OF EMPLOYEES TO WANT TO APPEAR TO IDENTIFY THEMSELVES WITH THE INTERESTS AND WISHES OF THEIR EMPLOYER. WE THEREFORE FIND THAT THE PRESENCE OF THE TWO FORELADIES WAS BOUND TO IMPAIR THE ABILITY OF THE EMPLOYEES, AND IN PARTICULAR THE FEMALE EMPLOYEES, TO MAKE AND EXPRESS AN INDEPENDENT DECISION WITH REGARD TO THE APPLICANT UNION. ACCORDINGLY, FOR THE FOREGOING REASONS, THE BOARD IS NOT PREPARED TO ACCEPT THE STATEMENTS OF DESIRE AS REPRESENTING A VOLUNTARY EXPRESSION OF THE TRUE WISHES OF THE EMPLOYEES WHO SIGNED THEM (SEE UNIVERSAL COOLER, A DIVISION OF SNO-BOY COOLERS LIMITED OLRB M.R. SEPTEMBER 1967 P. 546; CANADIAN MOULDINGS LTD. OLRB M.R. NOVEMBER 1967 P. 743; MALLORY HARDWARE PRODUCTS LTD. OLRB M.R. APRIL 1971 P. 195).

12. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN SIXTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON MARCH 8, 1971, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 92(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

13. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

14. WE HAVE HAD AN OPPORTUNITY OF READING THE DISSENTING DECISION OF BOARD MEMBER J.E.C. ROBINSON, HAVING REGARD TO THE NATURE AND CONTENT OF SOME OF THE STATEMENTS WHICH HE MAKES, WE FEEL OBLIGED TO COMMENT UPON THEM.

15. BOARD MEMBER ROBINSON'S DECISION READS IN PART: "... WHILE THE CRITERIA USED BY THE MAJORITY IN REACHING ITS DECISION TO EXCLUDE THE TWO NAMED PERSONS AS BEING MANAGERIAL IS ENLIGHTENED, I FIND THAT THE DECISION AND THE REASONS THEREFOR TO BE A COMPLETE AND RADICAL DEPARTURE FROM THE HERETOFORE JURISPRUDENCE OF THIS BOARD." HE GOES ON TO STATE: "IN MY OPINION, A MERE CASUAL PERUSAL OF SUCH EXAMINER'S REPORT WILL QUICKLY INDICATE THE REVERSAL IN ATTITUDES WHICH THE MAJORITY HAS TAKEN FROM THE PREVIOUS JURISPRUDENCE OF THE BOARD IN ASCERTAINING EXCLUSIONS FROM THE BARGAINING UNIT WITHIN THE PURVIEW OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT."

16. WE WOULD POINT OUT THAT NOWHERE IN HIS DECISION DOES BOARD MEMBER ROBINSON ANALYZE OR APPRAISE THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER UPON WHICH THE MAJORITY BASED ITS FINDING THAT MRS. JOHNSTON AND MRS. DALE EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF THE ACT. FURTHER, NOWHERE IN HIS DECISION DOES HE CITE THE PRIOR JURISPRUDENCE OF THE BOARD WITH RESPECT TO MANAGERIAL EXCLUSIONS FROM PLANT BARGAINING UNITS. WE ACCORDINGLY DO NOT KNOW ON WHAT BASIS BOARD MEMBER ROBINSON HAS MADE HIS FINDING THAT THE DECISION OF THE MAJORITY RELATING TO THE TWO FORELADIES IS "A COMPLETE AND RADICAL DEPARTURE FROM THE HERETOFORE DECIDED JURISPRUDENCE OF THIS BOARD." ACCORDING TO BOARD MEMBER ROBINSON A "CASUAL PERUSAL" OF THE EXAMINER'S REPORT "WILL QUICKLY INDICATE THE REVERSAL IN ATTITUDES WHICH THE MAJORITY HAS TAKEN FROM THE PREVIOUS JURISPRUDENCE." WE WOULD POINT OUT THAT PARAGRAPH 15 OF THE DECISION OF THE MAJORITY DATED JULY 30, 1971 CONTAINS AN ANALYSIS AND ASSESSMENT OF THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER. WE WOULD FURTHER MENTION THAT THE MAJORITY IN MAKING ITS DECISION WITH RESPECT TO MRS. JOHNSTON AND MRS. DALE RELIED UPON AND CITED IN ITS DECISION EARLIER CASES IN WHICH THE BOARD DEALT WITH THE CRITERIA TO BE APPLIED IN DETERMINING WHETHER PERSONS EXERCISE MANAGERIAL FUNCTIONS IN PLANT UNITS. IN OUR VIEW, THE FINDING OF THE MAJORITY WITH REGARD TO THE TWO FORELADIES IS FULLY IN ACCORD WITH THE PRIOR JURISPRUDENCE OF THE BOARD. WE THEREFORE REJECT THE FINDING OF BOARD MEMBER ROBINSON THAT THE POSITION TAKEN BY THE MAJORITY IS IN ANY WAY A "RADICAL DEPARTURE", OR INDEED A DEPARTURE AT ALL, FROM PAST DECISIONS OF THE BOARD.

17. BOARD MEMBER ROBINSON FURTHER STATES:

TO ME, IT WOULD SEEM THAT THE REASONING IN THE OFT QUOTED DECISIONS OF FALCONBRIDGE NICKEL MINES LIMITED CASE, OLRB M.R. SEPTEMBER 1966 P. 379; THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO CASE, OLRB M.R. AUGUST 1969 P. 669; AJAX AND PICKERING GENERAL HOSPITAL CASE, OLRB M.R. FEBRUARY 1970 P. 1283, AND ALGOMA STEEL CORPORATION LIMITED CASE, OLRB M.R. JUNE 1970 P. 365 HAS BEEN ABANDONED TO BE REPLACED BY SOME OTHER CRITERIA WHICH BEST CAN BE ILLUSTRATED BY EXTRACTING THE CRITERIA USED BY THE MAJORITY FROM THE EXAMINER'S REPORT HERE REPRODUCED.

WE WOULD POINT OUT THAT IN THE ABOVE CITED CASES THE BOARD WAS DEALING WITH OFFICE, CLERICAL AND TECHNICAL PERSONNEL IN LARGE "WHITE COLLAR" BARGAINING UNITS AND, IN ONE CASE, A HOSPITAL UNIT. THE NATURE OF THE WORK PERFORMED BY PERSONS IN SUCH UNITS AND THE ORGANIZATIONAL STRUCTURE OF SUCH EMPLOYERS' OPERATIONS ARE QUITE DIFFERENT FROM THAT FOUND IN PLANT MANUFACTURING UNITS OF THE TYPE WITH WHICH WE ARE CONCERNED IN THE INSTANT CASE. AS THE MAJORITY NOTED IN ITS DECISION OF JULY 30, 1971 IN DETERMINING WHETHER A PERSON EXERCISES MANAGERIAL FUNCTIONS, HIS OR HER DUTIES AND RESPONSIBILITIES MUST BE VIEWED IN THE CONTEXT OF THE PARTICULAR INDUSTRY OR BUSINESS WHERE A PERSON IS EMPLOYED. IT FOLLOWS THAT THE WEIGHT THE BOARD CAN ATTACH TO ANY PARTICULAR CRITERION WHICH IT APPLIES WILL VARY ACCORDING TO THE ORGANIZATIONAL SCHEME OF ANY PARTICULAR EMPLOYER. THE BOARD HAS RECOGNIZED THAT DIFFERENT CONSIDERATIONS MAY BE APPLICABLE IN DETERMINING WHETHER A PERSON IS MANAGERIAL WHEN THE BARGAINING UNIT CONCERNED IS COMPOSED OF "WHITE COLLAR" WORKERS IN LARGE BUSINESS CORPORATIONS AS OPPOSED TO "BLUE COLLAR" PLANT UNITS. AS WE HAVE ALREADY STATED, WE ARE SATISFIED THAT THE CRITERIA WHICH THE MAJORITY APPLIED IN MAKING ITS DETERMINATION WITH RESPECT TO THE STATUS OF MRS. JOHNSTON AND MRS. DALE ARE CONSISTENT WITH THOSE APPLIED BY THE BOARD IN THE PAST IN RELATION TO PLANT UNITS. FURTHERMORE, HAVING REGARD TO THE REASONS WHICH THE MAJORITY HAS ADVANCED IN FINDING THAT THE TWO FORELADIES EXERCISE MANAGERIAL FUNCTIONS, IN OUR VIEW, NO SUGGESTION CAN EVEN BE MADE THAT WE HAVE "ABANDONED" OR "REPLACED" THE CRITERIA APPLIED BY THE BOARD IN THE CASES CITED BY BOARD MEMBER ROBINSON.

18. BOARD MEMBER ROBINSON IN HIS DECISION REJECTS THE STATEMENT MADE IN OUR DECISION OF JULY 30, 1971 THAT IN PLANT BARGAINING UNITS, WHERE ONE PARTY ALLEGES THAT A FOREMAN OR FORELADY DOES NOT EXERCISE MANAGERIAL FUNCTIONS, THE ONUS RESTS WITH THE PARTY MAKING THE ALLEGATION TO SO SATISFY THE BOARD. IN THIS REGARD,

WE WOULD SIMPLY ONCE AGAIN REFER TO THE PASSAGE FROM THE ARTICLE BY G. W. REED, Q.C., TITLED WHITE-COLLAR BARGAINING UNITS UNDER THE ONTARIO LABOUR RELATIONS ACT (1969) PUBLISHED BY THE INDUSTRIAL RELATIONS CENTRE, QUEEN'S UNIVERSITY (RESEARCH SERIES: No. 8) QUOTED IN PARAGRAPH 10 OF THE MAJORITY DECISION OF JULY 30, 1971 WHICH READS:

...THERE IS A DEGREE OF UNIFORMITY IN NOMENCLATURE IN RESPECT OF SUPERVISORY EMPLOYEES IN A PLANT WHICH HAS GAINED BROAD GENERAL ACCEPTANCE. IT IS ALMOST A RULE OF THUMB THAT A PERSON CLASSIFIED AS A FOREMAN IS EXCLUDED FROM A PLANT BARGAINING UNIT, THAT A PERSON ABOVE SUCH A RANK IS ALSO EXCLUDED AND ONE BELOW THAT RANK INCLUDED, AND THAT THERE IS A HEAVY ONUS ON THE PARTY SEEKING TO DEPART FROM THIS PATTERN.

IN OUR VIEW, THE ABOVE PASSAGE ACCURATELY SETS FORTH THE BOARD'S POSITION WITH RESPECT TO THE QUESTION OF ONUS RELATING TO MANAGERIAL EXCLUSIONS FROM PLANT BARGAINING UNITS.

19. BOARD MEMBER ROBINSON STATES IN HIS DECISION THAT "THERE IS CONSIDERABLE EVIDENCE THAT THE TWO PERSONS IN QUESTION WERE KNOWN AS 'FLOORLADIES' RATHER THAN 'FORELADIES'". ALTHOUGH IN OUR VIEW NOTHING TURNS ON THIS FACT, OUR RECORD OF THE EVIDENCE DOES NOT REVEAL "CONSIDERABLE EVIDENCE" TO THIS EFFECT. WE WOULD POINT OUT THAT THERE IS NO DISPUTE THAT BOTH MRS. DALE AND MRS. JOHNSTON ARE CLASSIFIED BY THE RESPONDENT AS "FORELADIES" AND THIS FACT IS CONFIRMED BY A TELEGRAM SENT TO THE BOARD DATED MARCH 11, 1971, FROM COUNSEL FOR THE RESPONDENT.

20. BOARD MEMBER ROBINSON FURTHER STATES IN HIS DECISION THAT "THESE TWO PERSONS WERE GIVEN A CLASSIFICATION AS AN 'EMPLOYEE' UNDER THE TERMS OF SUCCESSIVE COLLECTIVE AGREEMENTS BETWEEN THE COMPANY AND THE EMPLOYEES' ASSOCIATION WITHOUT ANY APPARENT OBJECTION FROM EITHER THE COMPANY OR OTHER EMPLOYEES IN THE BARGAINING UNIT." IN THIS REGARD WE WOULD AGAIN MAKE REFERENCE TO OUR DECISION OF JULY 30, 1971 IN WHICH THE MAJORITY NOTED IN PARAGRAPH 16 THAT THE RESPONDENT VOLUNTARILY RECOGNIZED THE INTERVENER AS BARGAINING AGENT FOR A UNIT OF EMPLOYEES WHICH INCLUDED FORELADIES BUT THAT SINCE THE BOARD DID NOT KNOW ON WHICH BASIS THE FORELADIES WERE INCLUDED IN THE BARGAINING UNIT, LITTLE WEIGHT COULD BE ATTACHED TO THAT FACT.

21. BOARD MEMBER ROBINSON STATES IN HIS DECISION THAT EMPLOYEES GIVING VIVA VOCE EVIDENCE DID NOT CONSIDER THAT THE TWO FORELADIES

EXERCISED MANAGERIAL FUNCTIONS. HE FURTHER STATES LATER ON IN HIS DECISION THAT THE ONLY PERSONS WHO CONSIDERED MRS. JOHNSTON AND MRS. DALE TO BE MANAGEMENT "WERE THE MAJORITY OF THIS BOARD". STILL LATER HE STATES THAT "THERE IS NOT ONE IOTA OF EVIDENCE TO SUPPORT THE FINDING OF THE MAJORITY IN PARAGRAPH 11 OF THEIR DECISION". WE WOULD FIRST MENTION THAT ONLY TWO EMPLOYEES OUT OF A BARGAINING UNIT OF OVER SEVENTY EMPLOYEES GAVE VIVA VOCE, AND THE TWO EMPLOYEES WHO DID SO WERE TESTIFYING IN SUPPORT OF A STATEMENT OF DESIRE FILED IN OPPOSITION TO THE INSTANT APPLICATION. WE WOULD FURTHER POINT OUT THAT THE BOARD, FOR OBVIOUS REASONS, CANNOT ACCEPT THE SUBJECTIVE OPINION EXPRESSED BY EITHER EMPLOYEES OR MEMBERS OF MANAGEMENT AS EVIDENCE FOR THE PURPOSE OF DETERMINING WHETHER PARTICULAR PERSONS EXERCISE MANAGERIAL FUNCTIONS. SUCH A DETERMINATION NECESSARILY MUST BE BASED ON AN OBJECTIVE APPRAISAL OF THE EVIDENCE RELATING TO THE DUTIES AND RESPONSIBILITIES OF THE PERSONS CONCERNED. FINALLY, ON THE ISSUE AS TO WHETHER THE EMPLOYEES OF THE RESPONDENT REGARDED THE TWO FORELADIES AS BEING MANAGERIAL, THE TEST WHICH THE BOARD APPLIES IS, HAVING REGARD TO THE EMPLOYMENT RELATIONSHIP BETWEEN THE EMPLOYEES AND MRS. JOHNSTON AND MRS. DALE AND AUTHORITY WHICH THEY EXERCISED OVER THE EMPLOYEES, WOULD IT BE REASONABLE FOR THE EMPLOYEES TO LOOK UPON THE FORELADIES AS BEING MEMBERS OF MANAGEMENT. BASED ON THE EVIDENCE AND THE FOREGOING CONSIDERATIONS, IN OUR VIEW IT WOULD BE LOGICAL FOR THE EMPLOYEES TO ASSUME THAT THE TWO FORELADIES COULD AFFECT THEIR EMPLOYMENT RELATIONSHIP WITH THE RESPONDENT AND THAT THEY (THE EMPLOYEES) WOULD THEREFORE REGARD THE TWO WOMEN AS BEING MEMBERS OF MANAGEMENT. THE EVIDENCE IS THAT THE TWO FORELADIES WERE IN ATTENDANCE AT A MEETING AT WHICH THE SIGNATURES OF EMPLOYEES WERE SOLICITED ON A STATEMENT OF DESIRE EXPRESSING OPPOSITION TO THE APPLICATION FOR CERTIFICATION OF THE APPLICANT. IN THESE CIRCUMSTANCES, THE EMPLOYEES AT THE MEETING WOULD HAVE JUSTIFIABLE REASON TO BELIEVE THAT MANAGEMENT WOULD HAVE KNOWLEDGE AS TO WHETHER OR NOT THEY SIGNED THE STATEMENT OF DESIRE. ACCORDINGLY, THE PRESENCE OF THE TWO FORELADIES AT THE MEETING, IN OUR VIEW, WAS BOUND TO IMPAIR THE ABILITY OF THE EMPLOYEES TO MAKE AND EXPRESS AN INDEPENDENT DECISION WITH REGARD TO THE APPLICANT UNION.

22. BOARD MEMBER ROBINSON QUOTES AT SOME LENGTH FROM THE BOARD'S DECISION IN THE ACME RULER COMPANY LIMITED CASE OLRB M.R. NOVEMBER 1969 P. 952. BASED ON THE QUOTED PASSAGE HE FINDS THAT "THE UNDERLYING RATIONALE AND PHILOSOPHY" AS SET OUT IN THAT CASE "TO BE AT COMPLETE VARIANCE WITH THE UNDERLYING RATIONALE AND PHILOSOPHY EXERCISED BY THE MAJORITY IN THE INSTANT CASE." IN OUR VIEW, THE FACTS OF THE ABOVE CITED CASE ARE DISTINGUISHABLE FROM THOSE BEFORE US IN THAT THE MEMBER OF MANAGEMENT IN THE FORMER CASE MADE IT CLEAR TO THE EMPLOYEES THAT HE WAS NOT ACTING AS OR ON BEHALF OF THEIR EMPLOYER. WE ARE NOT ABLE TO REACH THE SAME CONCLUSION ON THE FACTS OF THE INSTANT CASE.

23. BOARD MEMBER ROBINSON STATES IN HIS DECISION THAT "THE MAJORITY WOULD SEEM TO FIND SOMETHING SINISTER IN THE ACTIVITIES OF THE TWO FORELADIES IN THE EMPLOYEES' ASSOCIATION." WE DO NOT FIND ANYTHING "SINISTER" IN THEIR ACTIVITIES. WE DO FIND, HOWEVER, THAT THE PROMINENT ROLE PLAYED BY MRS. JOHNSTON IN THE ASSOCIATION DURING A PERIOD WHEN SHE WAS A MEMBER OF MANAGEMENT CONSTITUTES EMPLOYER PARTICIPATION IN THE ADMINISTRATION OF THE ASSOCIATION WITHIN THE MEANING OF SECTIONS 12 AND 40 OF THE ACT.

DECISION OF BOARD MEMBER J.E.C. ROBINSON, Q.C.: APRIL 14, 1972.

I HAVE READ CAREFULLY BOTH OF THE DECISIONS OF MY COLLEAGUES DATED JULY 30, 1971 AND APRIL 14, 1972, AND FEEL OBLIGED TO COMMENT ON BOTH DECISIONS.

AS I INDICATED IN MY SHORT DECISION OF JULY 30, 1971, I AM IN AGREEMENT WITH THE FINDING OF THE MAJORITY THAT THE APPLICANT SHOULD NOT BE PERMITTED TO AMEND ITS CHARGES WITH RESPECT TO THE STATUS OF THE INTERVENER.

AT THAT TIME, HOWEVER, I ALSO INDICATED THAT I DISSENTED FROM THE DECISION OF THE MAJORITY THAT GLADYS DALE AND ANNE JOHNSTON EXERCISED MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT.

ON REFLECTION, I MAY SAY THAT THE USE OF THE WORD "DISSENT" WAS PROBABLY TOO STRONG IN INDICATING MY FEELINGS CONCERNING MY COLLEAGUES' DECISION. IT WOULD PROBABLY BE MORE CORRECT TO INDICATE THAT WHILE THE CRITERIA USED BY THE MAJORITY IN REACHING ITS DECISION TO EXCLUDE THE TWO NAMED PERSONS AS BEING MANAGERIAL IS ENLIGHTENED, I FIND THAT THE DECISION AND THE REASONS THEREFORE TO BE A COMPLETE AND RADICAL DEPARTURE FROM THE HERETOFORE DECIDED JURISPRUDENCE OF THIS BOARD.

I MUST SAY, ALSO, THAT LEST MY REMARKS BE INCORRECTLY MISTAKEN AS ARISING FROM CYNICISM OR SARCASM, I HAVE REPRODUCED IN ITS ENTIRETY AT THE CONCLUSIONS OF THIS, MY DECISION, THE EXAMINER'S REPORT ON WHICH THE MAJORITY BASED ITS CONCLUSIONS IN THE HOPE THAT PRACTITIONERS MAY FIND SUCH REPORT A USEFUL GUIDE IN THEIR PREPARATIONS FOR ARGUMENT ON EXCLUSIONS WITHIN SECTION 1(3)(B) OF THE ACT.

IN MY OPINION, A MERE CASUAL PERUSAL OF SUCH EXAMINER'S REPORT WILL QUICKLY INDICATE THE REVERSAL IN ATTITUDES WHICH THE MAJORITY HAS TAKEN FROM THE PREVIOUS JURISPRUDENCE OF THE BOARD IN ASCERTAINING EXCLUSIONS FROM THE BARGAINING UNIT WITHIN THE PURVIEW OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT.

TO ME, IT WOULD SEEM THAT THE REASONING IN THE OFT QUOTED DECISIONS OF FALCONBRIDGE NICKEL MINES LIMITED CASE, OLRB M.R. SEPTEMBER 1966 P. 379; THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO CASE, OLRB M.R. AUGUST 1969 P. 669; AJAX AND PICKERING GENERAL HOSPITAL CASE, OLRB M.R. FEBRUARY 1970 P. 1283, AND ALGOMA STEEL CORPORATION LIMITED CASE, OLRB M.R. JUNE 1970 P. 365 HAS BEEN ABANDONED TO BE REPLACED BY SOME OTHER CRITERIA WHICH BEST CAN BE ILLUSTRATED BY EXTRACTING THE CRITERIA USED BY THE MAJORITY FROM THE EXAMINER'S REPORT HERE REPRODUCED.

THE CASE IS SOMEWHAT UNIQUE IN THAT THE COMPANY AND THE UNION HAVE TAKEN OPPOSITE APPROACHES IN THEIR RESPECTIVE ARGUMENTS TO THAT WHICH IS NORMAL BEFORE THIS BOARD. THAT IS TO SAY THAT THE COMPANY IS ARGUING THAT THE TWO PERSONS IN QUESTION ARE "EMPLOYEES" WITHIN THE MEANING OF THE LABOUR RELATIONS ACT, WHILE THE UNION ARGUES THAT SUCH PERSONS ARE "MANAGERIAL" AND THEREFORE SHOULD BE EXCLUDED FROM THE PROVISIONS OF THE ACT BY VIRTUE OF SECTION 1(3)(B) OF SUCH ACT.

THE DECISION OF THE BOARD AS TO WHETHER THESE PERSONS ARE, OR ARE NOT, MANAGERIAL IS OF CONSEQUENCE WITH RESPECT TO THE CONSIDERATIONS WHICH CONFRONT THE BOARD ON THE OTHER ISSUES BEFORE THE BOARD. IF THE BOARD FINDS THAT SUCH PERSONS ARE EMPLOYEES, IT UNDOUBTEDLY WOULD FOLLOW THAT THE COLLECTIVE AGREEMENT ENTERED INTO BETWEEN THE EMPLOYEES' ASSOCIATION AND THE COMPANY IS A VALID AND SUBSISTING ONE AND IS A BAR TO THE CERTIFICATION OF THE APPLICANT IN THIS CASE. IT WOULD NOW SEEM THAT INTER ALIA SUCH THINGS AS AN INABILITY TO HIRE AND FIRE, THE INABILITY TO EFFECTIVELY MAKE RECOMMENDATIONS WHICH WILL AFFECT AN EMPLOYEE'S EMPLOYMENT STATUS, THE FACT THAT THE EXAMINE WORKS ALONG WITH OTHER EMPLOYEES IN THE BARGAINING UNIT AND THE INABILITY TO NORMALLY AFFECT DISCIPLINE ARE ALL CRITERIA WHICH, WHILE HERETOFORE CONSIDERED IMPORTANT AND OF GREAT SIGNIFICANCE, ARE NOW ACTIONS TO WHICH LITTLE IMPACT IS TO BE ATTRIBUTED IN ASCERTAINING WHETHER A PERSON IS AN EMPLOYEE WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT.

IN PARAGRAPH 14 OF THE MAJORITY DECISION OF JULY 30, 1971, MY COLLEAGUES HAVE STATED:-

WHERE THERE ARE FORELADIES AS WELL AS FOREMEN IN A PLANT, IN THE BOARD'S EXPERIENCE THERE HAS BEEN GENERAL ACCEPTANCE THAT THE FORELADIES ARE ALSO EXCLUDED FROM THE BARGAINING UNIT AS THE FIRST OR LOWEST LEVEL OF MANAGEMENT. IN THIS CIRCUMSTANCE, THE ONUS IS ON THE PARTY,

IN THIS CASE THE RESPONDENT, ALLEGING THAT THE TWO FORELADIES IN QUESTION SHOULD BE INCLUDED IN THE BARGAINING UNIT TO SATISFY THE BOARD THAT THE SAID FORELADIES DO NOT EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT.

WITH GREAT RESPECT TO MY COLLEAGUES, I REJECT THAT STATEMENT COMPLETELY. IN MY OPINION, IT IS NOT A QUESTION OF ONUS; IT IS FOR THE BOARD TO DETERMINE IF, IN ITS OPINION, SUCH PERSONS EXERCISE MANAGERIAL FUNCTIONS OR ARE EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS. THE RESPONSIBILITY IS NOT THAT OF ONE OF THE PARTIES; IT IS PURELY THE RESPONSIBILITY OF THE BOARD.

INDEED, EVEN IF THERE WERE SUCH AN ONUS, AS MY COLLEAGUES SUGGEST, I WOULD FIND THAT SUCH ONUS HAS BEEN DISCHARGED IN THAT (1) THERE IS CONSIDERABLE EVIDENCE THAT THE TWO PERSONS IN QUESTION WERE KNOWN AS "FLOORLADIES" RATHER THAN "FORELADIES"; (2) THESE TWO PERSONS WERE GIVEN A CLASSIFICATION AS AN "EMPLOYEE" UNDER THE TERMS OF SUCCESSIVE COLLECTIVE AGREEMENTS BETWEEN THE COMPANY AND THE EMPLOYEES' ASSOCIATION WITHOUT ANY APPARENT OBJECTION FROM EITHER THE COMPANY OR OTHER EMPLOYEES IN THE BARGAINING UNITS; (3) IN THE STATEMENT OF FACTS AGREED TO BY ALL PARTIES BEFORE THE BOARD, IT WAS AGREED THAT THESE TWO PERSONS CONSIDERED THEMSELVES TO BE EMPLOYEES AND THE COMPANY REGARDED THEM AS NOT BEING MEMBERS OF MANAGEMENT; AND (4) EMPLOYEES GIVING VIVA VOCE EVIDENCE DID NOT CONSIDER THAT THESE PERSONS EXERCISED MANAGERIAL FUNCTIONS.

I AM FORCED TO CONCLUDE, THEREFORE, THAT BASED ON THE CRITERIA HERETOFORE USED BY THE BOARD, MRS. DALE AND MRS. JOHNSTON DO NOT EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT, AND ARE INCLUDED IN THE BARGAINING UNIT.

IN SAYING THIS, HOWEVER, I AM MINDFUL THAT IF THIS DECISION IS FOLLOWED SUBSEQUENTLY, I AM OF THE OPINION THAT COMPANIES WILL BE ABLE TO EXCLUDE MANY MORE PERSONS FROM BARGAINING UNITS AS PERFORMING MANAGERIAL FUNCTIONS, BASED UPON THE CRITERIA USED IN THIS CASE.

IT FOLLOWS, OF COURSE, THAT IF THE TWO PERSONS IN QUESTION WERE FOUND NEITHER TO EXERCISE MANAGERIAL FUNCTIONS NOR TO BE EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS, THE COLLECTIVE AGREEMENT ENTERED INTO BETWEEN THE COMPANY AND THE EMPLOYEES' ASSOCIATION WOULD BE A BAR TO THIS APPLICATION, CONTINGENT UPON THE FINDING THAT SUCH EMPLOYEES' ASSOCIATION ENJOYED THE STATUS OF "TRADE UNION" WITHIN THE MEANING OF SECTION 1(1)(N) OF

THE LABOUR RELATIONS ACT. HAVING REGARD TO THE DECISION OF THE COURT OF APPEAL IN CSAO NATIONAL (INC.) V. OAKVILLE TRAFALGAR MEMORIAL HOSPITAL ASSOCIATION AND O.L.R.B., 72 CLLC 14,595, I WOULD FIND THAT SUCH EMPLOYEES' ASSOCIATION ENJOYED SUCH STATUS.

THE QUESTION REMAINS, HOWEVER, THAT EVEN THOUGH GLADYS DALE AND ANNE JOHNSTON WERE FOUND TO EXERCISE MANAGERIAL FUNCTIONS, SHOULD THIS CONSTITUTE EMPLOYER PARTICIPATION IN THE ADMINISTRATION OF THE ASSOCIATION WITHIN THE MEANING OF SECTIONS 12 AND 40 OF THE ACT WHICH WOULD PRECLUDE THE AGREEMENT ENTERED INTO BETWEEN THE COMPANY AND THE EMPLOYEES' ASSOCIATION FROM BEING A COLLECTIVE AGREEMENT WHICH IS A BAR TO THE INSTANT APPLICATION.

WHILE THE BOARD HAS NOT DEALT DIRECTLY WITH THIS QUESTION THAT I AM AWARE OF, THE BOARD HAS DEALT WITH APPLICATIONS WHERE PERSONS WHO PERFORMED MANAGERIAL FUNCTIONS OR WHO WERE EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS HAVE SIGNED UP MEMBERSHIP EVIDENCE AND SUPPORTED AN APPLICATION FOR CERTIFICATION. SEE AIR LIQUIDE CASE, 64 CLLC 16,002, AND ACME RULER COMPANY LIMITED CASE, OLRB M.R. NOVEMBER 1969 P. 952.

IN THE LATTER CASE, THE BOARD IN CONSIDERING SECTION 10 (NOW SECTION 12) OF THE LABOUR RELATIONS ACT STATED:-

8. IN ADDITION TO ACTING AS COLLECTOR, IT APPEARED THAT A UNION ORGANIZER CONTACTED MR. MCBURNEY TO ASCERTAIN WHETHER OR NOT HE WAS INTERESTED IN JOINING THE APPLICANT UNION. MR. MCBURNEY PARTICIPATED IN MEETINGS OF EMPLOYEES CALLED TO OBTAIN SUPPORT OF THE UNION. HE ALSO ACCOMPANIED ANOTHER EMPLOYEE TO THE HOMES OF A NUMBER OF PERSONS IN AN ATTEMPT TO CAUSE THEM TO BECOME MEMBERS OF THE UNION. MR. MCBURNEY TESTIFIED THAT THE EMPLOYEES WOULD NOT BELIEVE HIM TO BE ACTING ON BEHALF OF THE COMPANY WHEN HE SUPPORTED THE UNION. HE REALIZED THAT MANAGEMENT WOULD NOT HAVE GIVEN HIM PERMISSION TO DO SO. HE FURTHER TESTIFIED THAT THE EMPLOYEES WOULD NOT LOOK UPON HIM AS A REPRESENTATIVE OF MANAGEMENT WHEN HE WAS SUPPORTING THE UNION. IN RESPONSE TO A QUESTION PUT TO HIM BY THE REPRESENTATIVE OF THE RESPONDENT, MR. MCBURNEY STATED THAT HE DID NOT DISCUSS HIS JOB WITH THE PERSONS HE CONTACTED ON BEHALF OF THE UNION, HOWEVER, HE TOLD THE EMPLOYEES NOT TO TELL MANAGEMENT WHAT HE WAS DOING. HE FURTHER STATED THAT WHEN HE TOLD THEM THIS THEY WOULD KNOW HE WAS NOT WORKING FOR MANAGEMENT.

9. ON THE FACTS OF THIS CASE, WE DISTINGUISH BETWEEN MR. MCBURNEY'S SUPPORT FOR THE UNION AS EVIDENCED BY HIS STATEMENTS IN FAVOUR OF THE UNION AND HIS ATTENDANCE AT UNION MEETINGS FROM THE EVIDENCE CONCERNING THE FACT THAT HE ACTED AS COLLECTOR IN SIGNING MEMBERSHIP DOCUMENTS. WHILE THE DISTINCTION BETWEEN SIGNING CARDS AND SUPPORTING THE UNION MAY BE FINE, WE BELIEVE THE DISTINCTION IS BOTH MATERIAL AND SUBSTANTIVE.

10. SECTION 10 OF THE ACT READS AS FOLLOWS:

THE BOARD SHALL NOT CERTIFY A TRADE UNION IF ANY EMPLOYER OR ANY EMPLOYERS' ORGANIZATION HAS PARTICIPATED IN ITS FORMATION OR ADMINISTRATION OR HAS CONTRIBUTED FINANCIAL OR OTHER SUPPORT TO IT OR IF IT DISCRIMINATES AGAINST ANY PERSON BECAUSE OF HIS RACE, CREED, COLOUR, NATIONALITY, ANCESTRY OR PLACE OF ORIGIN.

11. IT IS TO BE NOTED THAT EVEN IF MR. MCBURNEY WERE ACTING AS THE EMPLOYER IN THIS CASE HIS ACTIVITIES COULD NOT BE CHARACTERIZED AS PARTICIPATION IN THE FORMATION OF THE UNION. THIS UNION WAS FORMED LONG BEFORE THIS CAMPAIGN COMMENCED. NEITHER CAN MR. MCBURNEY'S ACTIVITIES BE CHARACTERIZED AS PARTICIPATION IN THE ADMINISTRATION OF THE TRADE UNION. HIS STATEMENTS IN SUPPORT OF THE TRADE UNION ALSO CANNOT BE SAID TO BE A FINANCIAL CONTRIBUTION. AGAIN, THE MERE PAYMENT OF \$1.00 INITIATION FEE IS NOT, IN OUR VIEW THE FINANCIAL CONTRIBUTION BY AN EMPLOYER REFERRED TO IN SECTION 10.

12. IF MR. MCBURNEY WERE IN FACT ACTING ON BEHALF OF HIS EMPLOYER, IT MAY BE ARGUED THAT SUCH ACTIVITY WOULD BE CONTRARY TO SECTION 48 OF THE ACT SINCE HE WOULD THEN BE PARTICIPATING, ON BEHALF OF HIS EMPLOYER, IN THE "SELECTION" OF A TRADE UNION. WHILE AN EMPLOYER IS PROHIBITED FROM INTERFERING WITH THE SELECTION OF A TRADE UNION UNDER SECTION 48, IT IS TO BE NOTED THAT SECTION 10 OF THE ACT DOES NOT PROHIBIT THE BOARD FROM CERTIFYING A TRADE UNION WHERE AN EMPLOYER HAS PARTICIPATED IN OR INTERFERED WITH THE EMPLOYEES' SELECTION OF THAT UNION.

13. THE ACTIVITIES OF MR. MCBURNEY THEREFORE DO NOT PROHIBIT THE BOARD FROM CERTIFYING THE TRADE UNION UNDER SECTION 10 UNLESS HE WAS CONTRIBUTING "OTHER SUPPORT" TO THE UNION AS AN EMPLOYER. IF HE WAS NOT ACTING AS AN EMPLOYER, THEN SUCH ACTIVITIES GO TO THE WEIGHT OF THE MEMBERSHIP EVIDENCE SUBMITTED BY THE APPLICANT RATHER THAN DESTROY THE APPLICANT'S ABILITY TO BECOME A CERTIFIED BARGAINING AGENT.

14. IT HAS BEEN A LONG STANDING PRACTICE OF THE BOARD NOT TO GIVE EFFECT TO MEMBERSHIP EVIDENCE WHICH A MEMBER OF MANAGEMENT HAS SIGNED UP, SEE MCCARTHY MILLING COMPANY LIMITED CASE, C.C.H. CANADIAN LABOUR LAW REPORTER, TRANSFER BINDER '49-'54, 17,070; (1954) C.L.S. VOL. 2 76-424, AND SWIFT CANADIAN CO. LIMITED CASE, C.C.H. CANADIAN LABOUR LAW REPORTER, TRANSFER BINDER '49-'54, 17,071; (1954) C.L.S. VOL. 2 76-425. THE BOARD IN THIS CASE IS NOT PREPARED TO DEPART FROM THIS PRACTICE AND GIVE EFFECT TO ANY OF THE MEMBERSHIP DOCUMENTS SIGNED UP BY MR. MCBURNEY.

15. HOWEVER, THE "OTHER SUPPORT" GIVEN BY MR. MCBURNEY TO THE APPLICANT AND THE MANNER IN WHICH THAT SUPPORT WAS GIVEN APPEARS TO BE ON ALL FOURS WITH THE FACTS OF THE AIR LIQUIDE CASE, 64 C.L.L.C. 16,002. THE ACTIVITIES OF MR. MCBURNEY WERE NOT DIRECTED BY THE RESPONDENT NOR WERE THEY OF SUCH A NATURE THAT THE EMPLOYEES WOULD LIKELY CONSIDER THEM TO BE APPROVED BY THE RESPONDENT. IT WAS OBVIOUS FROM MR. MCBURNEY'S ACTIVITIES AND THE STATEMENTS HE MADE TO THE EMPLOYEES THAT HE WAS NOT ACTING ON BEHALF OF THE EMPLOYER WHEN HE SUPPORTED THE APPLICANT UNION. IN ADDITION, NONE OF THE EMPLOYEES WHO BECAME MEMBERS OF THE APPLICANT OBJECTED TO THE ACTIVITIES OF MR. MCBURNEY. IN THESE CIRCUMSTANCES, WE FIND THAT THE "OTHER SUPPORT" GIVEN BY MR. MCBURNEY WOULD NOT LIKELY CAUSE THE EMPLOYEES TO BELIEVE HE WAS ACTING AS THEIR EMPLOYER OR ON BEHALF OF THEIR EMPLOYER AND THEY WOULD NOT BE UNDULY INFLUENCED BY SUCH SUPPORT.

16. IN ALL THE CIRCUMSTANCES OF THIS CASE AND FOR THE REASONS GIVEN IN THE AIR LIQUIDE CASE, THE BOARD IS SATISFIED, IN THE ABSENCE OF OBJECTIONS FROM ANY OF THE EMPLOYEES OF THE RESPONDENT WHO JOINED THE APPLICANT UNION, THAT THE SUPPORT RENDERED TO THE APPLICANT BY MR. MCBURNEY DOES NOT WEAKEN THE EVIDENCE

OF MEMBERSHIP OF THE APPLICANT WITH RESPECT TO CARDS THAT HE DID NOT SIGN UP. IN ADDITION, THE BOARD FINDS THAT THE APPLICANT'S STATUS AS A TRADE UNION CAPABLE OF BEING CERTIFIED AS A BARGAINING AGENT HAS NOT BEEN IMPAIRED BY SUCH ASSISTANCE.

I MUST ASSERT THAT I FIND THE UNDERLYING RATIONALE AND PHILOSOPHY AS SET OUT IN THE FOREGOING CASE TO BE AT COMPLETE VARIANCE WITH THE UNDERLYING RATIONALE AND PHILOSOPHY EXERCISED BY THE MAJORITY IN THE INSTANT CASE.

INDEED, I FIND THE REASONING OF THE MAJORITY EVEN MORE BEWILDERING WHEN I CONSIDER THE AGREEMENT ON FACTS MADE BY ALL PARTIES TO THESE PROCEEDINGS.

THE AGREEMENT OF THE PARTIES WAS AS FOLLOWS:-

2. THE PARTIES AGREED UPON THE FOLLOWING STATEMENT OF FACTS--(1) ANNE JOHNSTON AND GLADYS DALE WERE DUES PAYING MEMBERS OF THE ASSOCIATION SINCE ITS INCEPTION TO THE PRESENT TIME. (2) ANNE JOHNSTON WAS AN EXECUTIVE OFFICER OF THE ASSOCIATION FOR EACH OF THE YEARS 1966, 1967 1968 AND WAS REPLACED IN OCTOBER OF 1969. FOR SOME PORTION OF THAT PERIOD SHE WAS VICE-PRESIDENT AND PRESIDENT OF THE ASSOCIATION. DURING THE ENTIRE PERIOD SHE WAS A MEMBER OF THE BARGAINING COMMITTEE. (3) NEITHER ANNE JOHNSTON NOR GLADYS DALE WERE MEMBERS OF THE BARGAINING COMMITTEE WHEN THE CURRENT AGREEMENT BETWEEN THE RESPONDENT AND THE ASSOCIATION WAS NEGOTIATED. (4) ANNE JOHNSTON'S DUTIES AS SET OUT IN THE REPORT OF THE EXAMINER DATED MAY 18, 1971 HAVE NOT CHANGED THROUGHOUT THE PERIOD FROM 1966 TO THE PRESENT. (5) THE PLANT MANAGER MR. BARRETT DID NOT REGARD ANNE JOHNSTON OR GLADYS DALE AS BEING MEMBERS OF MANAGEMENT AND NEITHER ANNE JOHNSTON NOR GLADYS DALE REGARDED THEMSELVES AS BEING MEMBERS OF MANAGEMENT.

IN THE INSTANT CASE, NOTWITHSTANDING THE FACT THAT NEITHER MRS. JOHNSTON NOR MRS. DALE REGARDED THEMSELVES AS MEMBERS OF MANAGEMENT, NOR THE FACT THAT THE PLANT MANAGER REGARDED THEM AS NOT BEING MEMBERS OF MANAGEMENT, THE MAJORITY WOULD SEEM TO FIND SOMETHING SINISTER IN THEIR ACTIVITY IN THE EMPLOYEES' ASSOCIATION.

I FIND THIS REASONING COMPLETELY IRRECONCILEABLE WITH THAT IN THE ACME RULER CASE, SUPRA, WHERE THE BOARD FOUND THAT WHILE THE PERSON IN QUESTION WAS RECOGNIZED BY ALL AS BEING A MEMBER OF MANAGEMENT,

HE WAS NOT ACTING ON BEHALF OF MANAGEMENT AND ACCORDINGLY THE BOARD WAS NOT PRECLUDED FROM CERTIFYING THE UNION BY SECTION 10 OF THE LABOUR RELATIONS ACT (NOW SECTION 12). TO ME I FIND A COMPARISON OF THE TWO DECISIONS INCOMPREHENSIBLE INSOFAR AS THEY RELATE TO THE ASSISTANCE GIVEN BY MANAGEMENT.

WHY DO THE ACTIONS OF THE TWO EMPLOYEES IN QUESTION BECOME SINISTER AND AS A CONSEQUENCE REPREHENSIBLE WHEN NEITHER THESE EMPLOYEES NOR THE MANAGEMENT RECOGNIZE THEM AS EXERCISING MANAGERIAL FUNCTIONS AND CONSEQUENTLY NOT MEMBERS OF MANAGEMENT? INDEED, ANY EVIDENCE WHICH WAS RECEIVED BY THE BOARD WITH RESPECT TO MRS. JOHNSTON AND MRS. DALE FROM EMPLOYEES IN THE BARGAINING UNIT WOULD SUGGEST THAT THE EMPLOYEES, THEMSELVES, CONSIDERED THESE PERSONS NOT TO EXERCISE MANAGERIAL FUNCTIONS.

IN SHORT, THEREFORE, THE ONLY PERSONS WHO CONSIDERED THESE PEOPLE TO BE MANAGERIAL WERE THE MAJORITY OF THIS BOARD, AND ON THEIR DECISION ALONE FLOWS THE SERIOUS RESULTS CONTAINED IN THESE DECISIONS.

INDEED, IT WOULD SEEM THAT IF PERSONS ARE IN ANY EXECUTIVE POSITIONS IN A UNION AND EXERCISE QUESTIONABLE MANAGERIAL AUTHORITY, VIZ. ARE IN A GREY AREA AS TO THEIR MANAGERIAL AUTHORITY, AND AN APPLICATION IS MADE TO THIS BOARD AND SUCH PERSONS ARE FOUND NOT TO BE EMPLOYEES, ANY COLLECTIVE AGREEMENT IN EXISTENCE WILL BE FOUND TO BE NULL AND VOID. THE RAMIFICATIONS WHICH THIS DECISION SUGGESTS ARE BOTH OVERWHELMING AND ASTOUNDING.

LASTLY, I WISH TO DEAL WITH THE STATEMENTS OF DESIRE FILED BY EMPLOYEES IN THE BARGAINING UNIT.

MY COLLEAGUES MAKE THEIR DETERMINATION ON THE STATEMENTS OF DESIRE IN PARAGRAPH 11 OF THEIR DECISION AS FOLLOWS:-

11. IN DETERMINING THE WEIGHT THAT CAN BE ACCORDED TO THE STATEMENTS OF DESIRE, WE NOTE THAT ANNE JOHNSTON AND GLADYS DALE, BOTH OF WHOM THE BOARD HAS FOUND EXERCISE MANAGERIAL FUNCTIONS, WERE IN ATTENDANCE AT THE MEETING OF MARCH 6TH, WHEN MOST OF THE SIGNATURES WERE SECURED ON THE STATEMENTS OF DESIRE. MOREOVER, BOTH OF THEM SIGNED THE SAID STATEMENTS EXPRESSING OPPOSITION TO THE INSTANT APPLICATION. HAVING REGARD TO OUR FINDINGS OF FACT RELATING TO THE DUTIES AND RESPONSIBILITIES OF MRS. JOHNSTON AND MRS. DALE, BASED ON THE REPORT OF THE EXAMINER, AS SET OUT IN PARAGRAPH 15 OF THE BOARD'S DECISION OF JULY 30, 1971, WE ARE SATISFIED THAT THE FEMALE EMPLOYEES OF THE RESPONDENT WOULD LOOK UPON

THE TWO FORELADIES AS BEING MEMBERS OF MANAGEMENT. ALTHOUGH, ACCORDING TO THE EVIDENCE, NEITHER MRS. JOHNSTON NOR MRS. DALE ACTIVELY PARTICIPATED IN THE MEETING, THE EMPLOYEES IN ATTENDANCE UNDOUBTEDLY WERE AWARE OF THEIR PRESENCE. IN THESE CIRCUMSTANCES, THE EMPLOYEES IN ATTENDANCE AT THE MEETING WOULD HAVE JUSTIFIABLE REASON TO BELIEVE THAT MANAGEMENT WOULD HAVE KNOWLEDGE AS TO WHETHER OR NOT THEY SIGNED THE STATEMENTS OF DESIRE. AS THE BOARD HAS STATED IN MANY DECISIONS, BECAUSE OF THE RESPONSIVE NATURE OF THE EMPLOYER-EMPLOYEE RELATIONSHIP, THERE IS A NATURAL DESIRE ON THE PART OF EMPLOYEES TO WANT TO APPEAR TO IDENTIFY THEMSELVES WITH THE INTERESTS AND WISHES OF THEIR EMPLOYER. WE THEREFORE FIND THAT THE PRESENCE OF THE TWO FORELADIES WAS BOUND TO IMPAIR THE ABILITY OF THE EMPLOYEES, AND IN PARTICULAR THE FEMALE EMPLOYEES, TO MAKE AND EXPRESS AN INDEPENDENT DECISION WITH REGARD TO THE APPLICANT UNION. ACCORDINGLY, FOR THE FOREGOING REASONS, THE BOARD IS NOT PREPARED TO ACCEPT THE STATEMENTS OF DESIRE AS REPRESENTING A VOLUNTARY EXPRESSION OF THE TRUE WISHES OF THE EMPLOYEES WHO SIGNED THEM (SEE UNIVERSAL COOLER, A DIVISION OF SNO-BOY COOLERS LIMITED OLRB M.R. SEPTEMBER 1967 P. 546; CANADIAN MOULDINGS LTD. OLRB M.R. NOVEMBER 1967 P. 743; MALLORY HARDWARE PRODUCTS LTD. OLRB M.R. APRIL 1971 P. 195).

HAVING READ SUCH FINDING, I CAN MERELY ASK THE FOLLOWING QUESTIONS:-

- (1) WHY IS THE MAJORITY OF THE BOARD SATISFIED THAT THE FEMALE EMPLOYEES OF THE RESPONDENT WOULD LOOK UPON THE TWO FORELADIES AS BEING MEMBERS OF MANAGEMENT WHEN THE EVIDENCE OF THE EMPLOYEES IS TO THE CONTRARY, WHEN THE TWO FORELADIES DID NOT REALIZE THEY WERE MEMBERS OF MANAGEMENT, AND WHEN THE PLANT MANAGER DID NOT REALIZE THEY WERE MEMBERS OF MANAGEMENT? TO ME THE STATEMENT OF THE MAJORITY IS NOT IN ANY WAY SUPPORTED BY EVIDENCE.

FURTHER (2) ALTHOUGH THERE IS SOME EVIDENCE BY TWO WITNESSES THAT MRS. JOHNSTON AND MRS. DALE WERE AT THE MEETING, WHY WOULD THE "EMPLOYEES HAVE JUSTIFIABLE REASON TO BELIEVE THAT MANAGEMENT WOULD HAVE KNOWLEDGE AS TO WHETHER OR NOT THEY SIGNED THE STATEMENTS OF DESIRE" WHEN THE ONLY PERSONS WHO CONSIDER THESE PERSONS TO BE MANAGEMENT IS THE BOARD MAJORITY? SURELY IT IS CLEAR FROM THE REASONING IN THE ACME RULER CASE THAT THEY WERE NOT ACTING AS EMPLOYEES. SURELY THERE MUST

BE SOME FORM OF MENS REA TO ATTRIBUTE THE SINISTER ACTIONS WHICH THE MAJORITY DOES TO THEIR ACTIONS.

FURTHER, AND (3) WHY WAS "THE PRESENCE OF THE TWO FORELADIES ...BOUND TO IMPAIR THE ABILITY OF THE EMPLOYEES, AND IN PARTICULAR THE FEMALE EMPLOYEES, TO MAKE AND EXPRESS AN INDEPENDENT DECISION WITH REGARD TO THE APPLICANT UNION," WHEN THE BARGAINING UNIT EMPLOYEES FELT MRS. DALE AND MRS. JOHNSTON WERE FELLOW EMPLOYEES? WITH GREAT RESPECT THERE IS NOT ONE IOTA OF EVIDENCE TO SUPPORT THE FINDINGS OF THE MAJORITY IN PARAGRAPH 11 OF THEIR DECISION.

IN THE NEWMARKET HYDRO ELECTRIC COMMISSION CASE, BOARD FILE No. 18565-70-R, DATED MARCH 17, 1971, IN DISCUSSING THE PRESENCE OF AN ACTING FOREMAN WHILE A PETITION WAS DRAWN UP AND CIRCULATED, THE BOARD STATED:

THERE IS NO EVIDENCE BEFORE THIS BOARD THAT THE DEGREE OF AUTHORITY EXERCISED BY SIMMONS COULD AND DID REASONABLY INDUCE THE EMPLOYEES TO BELIEVE THAT HE POSSESSED THE POWER TO AFFECT THEIR EMPLOYMENT STATUS. THE TOTAL EFFECT OF THE TESTIMONY OF BROUGHTON, THE ONLY DIRECT EVIDENCE ON THIS POINT, IS TO THE CONTRARY. MOREOVER, THE FACTS IN THE LINK DECISION ARE FURTHER DISTINGUISHABLE ON THE GROUNDS THAT IN THAT CASE NOT ONLY DID THE EMPLOYEE IN QUESTION TAKE AN ACTIVE ROLE IN THE CIRCULATION OF THE STATEMENT OF DESIRE, BUT FURTHER, HE RECEIVED THE ASSISTANCE FROM A THIRD PERSON IN THIS REGARD.

HAVING REGARD TO THE UNDERLYING PRINCIPLES ENUNCIATED IN SUCH PARAGRAPH, I THEREFORE WOULD FIND ALTERNATIVELY THAT EVEN IF THERE HAD BEEN A VIOLATION OF SECTION 12 OR SECTION 40 OF THE LABOUR RELATIONS ACT, THE STATEMENTS OF DESIRE REFLECT A VOLUNTARY EXPRESSION OF THE TRUE WISHES OF THE SIGNATORIES TO THEM, AND I WOULD HAVE DIRECTED A REPRESENTATION VOTE.

I NOW SET FORTH, HERewith, THE CONTENTS OF THE NARRATIVE PORTION OF THE EXAMINER'S REPORT IN THE HOPE THAT THE PRINCIPLES CONTAINED THEREIN MAY BE, IN SOME WAY, A GUIDELINE TO PRACTITIONERS APPEARING BEFORE THE BOARD:-

3. FOLLOWING THE EXAMINATION OF MRS. GLADYS DALE, THE PARTIES AGREED AND SIGNIFIED SAME BY SIGNING IN MY EXAMINER'S NOTE BOOK THAT THE EVIDENCE OF MRS. DALE SHALL BE REPRESENTATIVE OF THE DUTIES AND RESPONSIBILITIES OF THE OTHER FORELADY, NAMELY, MRS. ANNE (N.E.) JOHNSTON.

EXAMINATION OF MRS. GLADYS DALE

4. THE WITNESS STATED THAT SHE HAS BEEN EMPLOYED WITH THE RESPONDENT FOR 12 YEARS AND THAT HER PRESENT CLASSIFICATION IS THAT OF FORELADY, A POSITION SHE HAS HELD FOR THE LAST 6 OR 7 YEARS. HER IMMEDIATE SUPERVISOR IS MR. LES KNOTT, PLANT SUPERVISOR,
5. HER HOURS OF WORK ARE FROM 7:00 A.M. TO 3:30 P.M., AND 3:30 P.M. UNTIL 12 MIDNIGHT, WHICH IS A ROTATING SHIFT OF A TWO-WEEK PERIOD MONDAY TO FRIDAY. SHE RECEIVES AN HOURLY RATE. SHE HAS WORKED OVERTIME AND RECEIVED PAY.
6. SHE SAID THAT AS FORELADY SHE HAS 20 EMPLOYEES UNDER HER SUPERVISION. SHE IS RESPONSIBLE TO SEE THAT THE GIRLS ARE WORKING AT THE RIGHT MACHINES AND THAT THERE ARE NO PROBLEMS INVOLVED. A SCHEDULE SHOWING THE EMPLOYEE WHO WILL BE WORKING ON A MACHINE FOR EACH DAY IS PREPARED BY MR. KNOTT. THIS IS POSTED ON THE BOARD AND SHE MAKES SURE EACH DAY THAT THE GIRL POSTED TO A PARTICULAR MACHINE IS WORKING ON IT.
7. SHE MAKES OUT THE ORDERS, ALSO SHE WORKS HERSELF ON THE MACHINES TO RELIEVE THE GIRLS. SHE DOES RELIEF WORK FOR THE GIRLS IF THEY ARE GOING ON BREAKS AND SOMETIMES WHEN THEY ARE GOING TO USE THE WASHROOMS.
8. SHE SAID THAT SHE AND THE OTHER FORELADY MAKE UP THE ORDERS THAT GO THROUGH THE MACHINES. THE ORDERS ARE PARTITIONS FOR CARTONS AND THEY ARE MADE BY THE MACHINES. THE ORDERS WOULD GIVE THE NUMBER OF PARTITIONS TO BE MADE. SHE IS ALSO CHECKING THE GIRLS TO SEE THAT THEY ARE ALL RIGHT. SHE CHECKS THE STRIPPER MACHINES TO SEE THAT THEY HAVE NO PROBLEMS. SHE CHECKS IN THE HAND ASSEMBLY DEPARTMENT TO SEE THAT ALL THINGS ARE RUNNING SMOOTHLY. IT TAKES HER APPROXIMATELY ONE AND A HALF HOURS PER DAY MAKING UP HER ORDERS. SHE SPENDS APPROXIMATELY ONE AND A HALF HOURS PER DAY RELIEVING THE GIRLS ON THE MACHINES. THE REMAINDER OF HER TIME IS SPENT CHECKING THE MACHINES, THE GIRLS AND THE DIFFERENT DEPARTMENTS.
9. THE WITNESS SAID SHE DOES NOT HIRE EMPLOYEES AND NEVER HAS. WHEN ASKED IF SHE HAD EVER FIRED AN EMPLOYEE, THE WITNESS SAID THAT "YEARS AGO I DID."

10. SHE SAID THAT WHEN SHE WAS FIRST MADE FORELADY SHE FIRED A GIRL. THAT WAS IN 1966. SHE SAID THAT THE GIRL AT THE TIME WAS PUTTING ON NAIL POLISH AND COMBING HER HAIR AND THE WITNESS WAS TOLD TO LET HER GO. SHE SAID THAT MR. PARKINSON, WHO WAS THE SUPERINTENDENT AT THE TIME, CAME TO THE FACTORY AND SAW THE GIRL COMBING HER HAIR AND PUTTING ON NAIL POLISH. "HE ASKED ME WHAT SHE WAS SUPPOSED TO BE DOING. I TOLD HIM THAT SHE WAS WORKING ON HAND ASSEMBLY AND HE SAID IT DID NOT LOOK LIKE SHE WAS DOING IT, SO HE SAID TO LET HER GO. I WENT TO THE GIRL AND TOLD HER TO CLOCK OUT."
11. SHE SAID THAT THERE HAS NOT BEEN ANY DISCHARGE OF EMPLOYEES SINCE THAT TIME. THEY HAD A LAY-OFF IN MARCH, 1971, BUT IT WAS FOR ONLY A FEW DAYS. THE LAST 3 OR 4 EMPLOYEES THAT WERE HIRED WERE THE ONES THAT WERE LAID OFF. HOWEVER, SHE WAS NOT INVOLVED IN THE LAY-OFF HERSELF. MR. BARRETT, THE PLANT MANAGER, TOLD THE EMPLOYEES THAT THEY WOULD BE LAID OFF.
12. SHE SAID THAT SHE CANNOT RECOMMEND HIRING EMPLOYEES NOR WAS SHE EVER TOLD THAT SHE COULD RECOMMEND HIRING. SHE WAS NEVER TOLD THAT SHE COULD FIRE EMPLOYEES NOR WAS SHE TOLD SHE COULD RECOMMEND FIRING.
13. SHE WOULD DISCIPLINE THE GIRLS TO A CERTAIN EXTENT. THE WITNESS SAID THAT SHE INSTRUCTS THEM AND ASSIGNS THEM JOBS. SHE HAS NEVER ATTENDED ANY MEETINGS WITH MANAGEMENT DEALING WITH LABOUR RELATIONS. THERE IS ONE OTHER FORELADY IN THE PLANT, MRS. JOHNSTON.

EXAMINATION BY MR. ARMSTRONG

14. THE WITNESS SAID THAT THERE ARE APPROXIMATELY 90 EMPLOYEES IN THE PLANT AND THAT THERE ARE TWO DEPARTMENTS. THE HAND ASSEMBLY DEPARTMENT AND THE PRODUCTION DEPARTMENT.
15. SHE SAID THAT AS A FORELADY SHE IS RESPONSIBLE FOR THE FEMALE EMPLOYEES ONLY.
16. IN THE HAND ASSEMBLY DEPARTMENT THE NUMBER OF EMPLOYEES CAN VARY FROM 3 TO 10. IN THE PRODUCTION DEPARTMENT THERE ARE 6 STRIPPERS.
17. THE MALE EMPLOYEES ARE UNDER THE SUPERVISION OF A FOREMAN. THE MALE EMPLOYEES ARE INTERMINGLED IN THE

PLANT WITH THE FEMALE EMPLOYEES AS THEY OPERATE THE MACHINES AND THE FEMALE EMPLOYEES ASSIST ON THE MACHINES.

18. THE FACTORY PRODUCTION ORDERS COME FROM THE OFFICE TO HER AND THEN SHE MAKES OUT AN ORDER FROM IT WHICH GOES TO THE MACHINE TO BE FILLED. THE ORDER SHE PREPARES INDICATES THE AMOUNT, QUANTITY, SIZE OF PARTITION AND ORDER NUMBER. AFTER COMPLETING HER ORDER SHE THEN PLACES IT ON A TABLE BY THE MACHINE.
19. THE WITNESS SAID THAT ATTENDANCE RECORDS ARE KEPT AND THIS IS DONE IN THE OFFICE. IT IS TAKEN FROM TIME CARDS. SHE SAID THAT IF AN EMPLOYEE IS NOT COMING TO WORK, THEY ARE TO REPORT TO THE OFFICE. EMPLOYEES HAVE REPORTED TO HER BUT THEY ARE SUPPOSED TO REPORT TO THE OFFICE. THE PROCEDURE TO CALL THE FORELADY WAS STOPPED A LONG TIME AGO, HOWEVER THE ODD EMPLOYEE STILL CALLS HER.
20. SHE SAID THAT IF AN EMPLOYEE WISHED PERMISSION FOR TIME OFF, THE EMPLOYEE WOULD SPEAK TO THE SUPERINTENDENT ABOUT IT. HOWEVER, SHE HAS BEEN ASKED FOR TIME OFF BY THE EMPLOYEES.
21. THE WITNESS WAS ASKED IF SHE HAD EVER GRANTED TIME OFF TO EMPLOYEES AND SHE SAID "NO." THE EMPLOYEES MUST SPEAK TO THE SUPERINTENDENT FOR TIME OFF. SHE SAID SOME OF THE EMPLOYEES ASK HER TO ASK THE SUPERINTENDENT FOR THEM, IF THEY ARE WORKING ON THE MACHINES. SHE SAID THAT IF AFTER ASKING THE SUPERINTENDENT AND PERMISSION IS GRANTED SHE WOULD ADVISE THEM OF SUCH.
22. SHE SAID THAT SHE HAS GIVEN PERMISSION FOR AN EMPLOYEE TO GO DIRECTLY HOME WHEN THAT EMPLOYEE WAS SICK, WITHOUT ASKING THE SUPERINTENDENT. MR. BOB SMITH, A PRODUCTION SUPERVISOR, IS ON THE SAME SHIFT AS SHE, AND THE OTHER PRODUCTION SUPERVISOR, TOM WILSON, WORKS WITH THE OTHER FORELADY ON HER SHIFT.
23. SHE WAS ASKED WHEN SHE GOES TO THE SUPERVISOR FOR REQUESTS FOR TIME OFF, DOES SHE GO TO MR. SMITH OR MR. KNOTT. SHE SAID SHE GOES TO MR. SMITH. SHE SAID SHE GOES TO MR. SMITH AND TELLS HIM AND HE TAKES IT FROM THERE.
24. THE WITNESS SAID SHE HAS A WORK STATION AND IT IS IN THE PRODUCTION OFFICE. MR. LES KNOTT, MR. BOB SMITH, MR. TOM WILSON, LINDA LITTLEFORD, ANNE JOHNSTON AND HERSELF WORK IN THE PRODUCTION OFFICE.

25. SHE SAID THAT THERE ARE 4 DESKS IN THIS OFFICE. ONE IS AN ORDER DESK WHICH IS USED BY HERSELF AND MRS. JOHNSTON. SHE SAID THAT THE ORDERS ARE MADE AT THE START OF THE SHIFT. SHE DOES NOT MAKE ANY PRODUCTION REPORTS ONLY ORDERS.
26. THE WITNESS WAS ASKED HAD SHE EVER IN THE PAST MADE A REPORT ON HOW AN EMPLOYEE WAS DOING ON A MACHINE AND SHE SAID "YES, SHE IS ASKED HOW THE EMPLOYEES ARE MAKING OUT ON THE MACHINES. MR. KNOTT ASKS HER THIS WHEN NEW GIRLS START. THESE REPORTS ARE VERBAL." SHE SAID SHE HAS NEVER REPORTED A GIRL WHO WAS NOT GOING TO MAKE IT. HER REPORTS ARE FAVOURABLE. SHE SAID THEY ARE ALWAYS GOOD REPORTS.
27. THE WITNESS WAS ASKED IF THE GIRLS WERE PROMOTED AND SHE SAID "YES". SHE WAS ASKED IF SHE HAS BEEN ASKED FOR HER OPINION ON IT AND SHE SAID "YES". SHE SAID THAT THE EMPLOYEES ARE RATED ON HOW WELL THEY WORK ON THE MACHINES.
28. SHE SAID THAT SHE STARTED OUT WITH THE COMPANY WORKING ON PRODUCTION HERSELF. IN 1965 SHE WORKED IN PRODUCTION. THE FORELADY POSITION WAS POSTED ON THE BOARD AND SHE APPLIED FOR THE JOB. OTHERS ALSO APPLIED, HOWEVER, SHE WAS SELECTED. A POSTING WAS MADE AND THE POSTING INDICATED SHE WAS ACCEPTED AND APPOINTED FORELADY, REPLACING THE PREVIOUS FORELADY. AT THAT TIME SHE RECEIVED A SALARY.
29. SHE SAID THAT HER DUTIES SINCE 1965 ARE THE SAME AS NOW. SHE SAID PRIOR TO APPROXIMATELY 4 YEARS AGO SHE RECEIVED A SALARY. AT THAT TIME IT WAS CHANGED TO AN HOURLY RATE. CHANGING TO AN HOURLY RATE SHE WAS ABLE TO RECEIVE PAYMENT FOR OVERTIME.
30. SHE SAID SHE COULD NOT RECALL THE GIRLS'S NAME THAT SHE FIRED. THE WITNESS WAS ASKED IF SHE RECALLED LETTING A GIRL GO BY THE NAME OF LINDA GASKIN, WHO WAS SUMMER HELP. THE WITNESS SAID "I DON'T THINK I LET HER GO. SHE WAS FOOLING AROUND AND I TOLD HER TO PUNCH OUT. SHE WAS SUMMER HELP AND IT WAS HER LAST SHIFT. THIS WAS BEFORE THE SHIFT HAD ENDED." SHE SAID THAT HER MODE OF DRESS IS NOT ANY DIFFERENT FROM THE OTHER GIRLS'.
31. THE WITNESS WAS REMINDED THAT SHE HAD SAID THAT SHE HAD NOT ATTENDED ANY MEETINGS WITH MANAGEMENT. SHE WAS

ASKED IF SHE HAD THE SUPERVISORS HAD MEETINGS. SHE SAID "YES, DEALING WITH PRODUCTION WORK AND THE EMPLOYEES' PERFORMANCE," AND THAT THESE MEETINGS WOULD TAKE PLACE WHENEVER THE OCCASION AROSE. SHE COULD NOT RECALL WHEN THE LAST MEETING WAS.

32. SHE SAID THAT SHE DID NOT NEED TYPING DONE, DEALING WITH HER WORK. SHE WAS ASKED IF SHE IS REQUIRED TO TAKE A GIRL OFF ONE MACHINE AND PUT HER ON ANOTHER. SHE SAID "YES". SHE SAID THAT IF A MACHINE PROVED TO BE TOO FAST FOR AN EMPLOYEE, SHE WOULD MOVE HER TO A SLOWER ONE.

33. NO QUESTIONS WERE ASKED BY THE INTERVENER.

EXAMINATION BY MR. GORDON

34. THE WITNESS WAS ASKED IF MR. KNOTT'S TITLE WAS PLANT SUPERINTENDENT. SHE SAID SHE WAS NOT SURE IF THAT WAS HIS TITLE, BUT IT COULD BE.

35. SHE SAID THAT MR. PARKINSON TOLD HER TO DISMISS THE GIRL WHO WAS COMBING HER HAIR AND PUTTING ON NAIL POLISH. SHE SAID SHE DID NOT MAKE THE DECISION, MR. PARKINSON DID AND SHE CARRIED OUT HIS ORDER.

36. THE WITNESS WAS REMINDED THAT SHE HAD SAID THAT SHE WOULD DISCIPLINE THE STAFF. SHE WAS ASKED WHAT SHE MEANT BY THAT. SHE SAID THE EMPLOYEES ARE THERE TO WORK AND NOT FOOL AROUND AND THAT IF SHE DOES NOT WATCH THEM THEY WOULD FOOL AROUND. SHE SAID THAT IF THEY ARE CARRYING ON SHE TELLS THEM "LESS TALKING".

37. THE WITNESS SAID THAT SHE HAS NEVER SUSPENDED A GIRL NOR ORDERED THAT PAY BE DEDUCTED. SHE SAID THAT SHE HAS NEVER ISSUED A WRITTEN REPRIMAND, ONLY VERBAL INSTRUCTIONS OF SOME KIND.

38. THE WITNESS WAS ASKED IF SHE FINDS SHE HAS A DISCIPLINE PROBLEM WHAT DOES SHE DO. SHE SAID THAT SHE WOULD GO TO THE FOREMAN AND HE WOULD LOOK AFTER IT. SHE SAID THAT SHE WOULD SPEAK TO JOHN HUTCHISON, THE FOREMAN, IN MATTERS OF DISCIPLINE, AND THAT MR. HUTCHISON WOULD TAKE IT TO MR. SMITH. SHE SAID SHE ONLY GOES TO MR. HUTCHISON TO MAINTAIN ORDER.

39. THE WITNESS WAS ASKED IF IT WAS NECESSARY TO CHANGE THE WORK ASSIGNMENTS WHO DOES SHE GO TO. SHE SAID "MR. SMITH."

40. SHE SAID THERE ARE MEN RUNNING THE MACHINES AND MR. SMITH IS IN CHARGE OF THE MEN ON THE MACHINES. SHE WAS ASKED IF MR. HUTCHISON IS RESPONSIBLE FOR THE MACHINES AND THE WITNESS SAID "I DO NOT THINK HE IS. IT IS MR. SMITH'S RESPONSIBILITY." SHE SAID SHE DOES NOT RECEIVE ANY DIRECTIONS OR INSTRUCTIONS FROM MR. HUTCHISON.
41. THE WITNESS WAS ASKED HOW DID SHE KNOW WHEN ORDERS ARE READY FOR THE MACHINE. SHE SAID THAT THE OPERATOR WOULD TELL HER WHEN THE MACHINE IS READY. SHE WOULD THEN PUT 4 GIRLS TO WORK WITH THE OPERATOR. THE SELECTION OF GIRLS IS ACCORDING TO THE WORK SCHEDULE, WHICH IS PREPARED IN THE OFFICE.
42. SHE SAID THAT SHE INSTRUCTS THE GIRLS AND THAT NO ONE ELSE INSTRUCTS THEM. SHE ALSO TRAINS THE GIRLS AND THAT NEW GIRLS RECEIVE INSTRUCTIONS FROM THE GIRL THEY PUT HER WITH. SHE SAID WHEN A NEW GIRL STARTS, SHE WOULD PUT HER WITH A SENIOR GIRL. THE WITNESS SAID THAT THE PERCENTAGE OF TRAINING RECEIVED FROM A SENIOR GIRL IS NEARLY ALL OF HER TRAINING DEALING WITH MACHINE WORK.
43. THE GIRL RECEIVES TRAINING IN ASSEMBLY AND THAT SHE, HERSELF, INSTRUCTS HER. THE LEAD HAND WOULD ALSO SHOW THEM ON HAND ASSEMBLY. SHE SAID THAT NEARLY ALL TRAINING IS RECEIVED FROM THE LEAD HAND, HOWEVER, IT WOULD DEPEND HOW BUSY THE LEAD HAND IS. IF THE LEAD HAND IS BUSY, SHE SHOWS THE EMPLOYEE HERSELF.
44. IF THE GIRL IS WORKING AT THE STRIPPERS THEY NEED TO KNOW VARIOUS CUTS, HIGH OR LOW CUTS AND THAT SHE TEACHES THEM THIS. SHE SAID THAT SOMETIMES THE OPERATOR WILL WATCH AND THAT IF THE EMPLOYEE WAS IN DOUBT THE OPERATOR WOULD ASSIST HER. SHE SAID THAT THE PERCENTAGE OF TIME FROM THE OPERATOR IS SMALL, MOST OF THE TRAINING IS RECEIVED FROM HER.
45. THE WITNESS WAS ASKED WITH RESPECT TO A GIRL'S TOTAL TRAINING WHAT PERCENTAGE WOULD BE DONE BY SOMEONE OTHER THAN HERSELF. THE WITNESS SAID MOST OF THE TRAINING IS DONE BY SOMEONE OTHER THAN HERSELF.
46. THE WITNESS WAS REMINDED THAT SHE HAD SAID THAT WHEN THE GIRLS WISHED TIME OFF THAT THEY ASKED HER TO ASK THE SUPERINTENDENT. SHE WAS ASKED WHY THE GIRLS ASKED HER. THE WITNESS SAID "THE GIRLS FEEL FREER TO ASK MY RATHER THAN THE SUPERVISOR." SHE WAS ASKED WHY DO THEY FEEL

FREER TO ASK HER AND THE WITNESS SAID IT WOULD DEPEND UPON CIRCUMSTANCES. SHE WAS ASKED IF IT WAS BECAUSE THEY WERE SCARED. SHE SAID "THEY ARE, AS A RULE, AFRAID OF THE SUPERVISOR."

47. SHE SAID THAT WHEN PERMISSION IS ASKED HER TO GO HOME BECAUSE OF ILLNESS, IT WOULD DEPEND UPON HOW ILL THE PERSON WAS. SHE SAID THAT IF THE EMPLOYEE WAS READY TO PASS OUT "I TELL THEM TO CLOCK OUT AND THEN TELL THE SUPERVISOR." SHE SAID THAT SHE KNEW, THAT SHE COULD TELL, WHEN THEY ARE SICK OR NOT.
48. THE WITNESS SAID THAT SHE WAS NOT SURE IF MR. BOB SMITH'S TITLE WAS SHIFT SUPERVISOR BUT SHE THINKS IT IS. SHE DID NOT KNOW THE SIZE OF THE PRODUCTION OFFICE, ONLY THAT IT IS SEPARATE FROM THE PLANT. IT IS ON THE SAME FLOOR AND THAT ACCESS TO THIS ROOM IS BY STAIRS. SHE SAID THE STAIRS LEAD FROM THE PRODUCTION FLOOR AND THAT THERE ARE TWO DOORS TO THE OFFICE. SHE SAID THAT THE DESK SHE USES IS ALSO USED BY MRS. JOHNSTON AND NO ONE ELSE.
49. SHE WAS ASKED IF SHE KEEPS A FILE OR DOES ANY PAPER WORK. SHE SAID NO FILES JUST ORDERS MADE UP. THE WITNESS WAS ASKED WHAT SHE MEANT BY PROMOTION. SHE SAID "WE DO NOT GIVE ANY PROMOTIONS AT ALL."
50. THE WITNESS WAS REMINDED THAT SHE HAD TOLD MR. ARMSTRONG THAT SHE GAVE VERBAL OPINIONS RE PROMOTIONS AND DID SHE KNOW WHAT IS MEANT BY THE WORD "PROMOTION". THE WITNESS SAID "YES". SHE WAS ASKED TO EXPLAIN WHAT SHE UNDERSTOOD PROMOTION TO MEAN. HER UNDERSTANDING IS THAT IF A GIRL IS CAPABLE IN HER WORK SHE IS PROMOTED.
51. THE WITNESS WAS ASKED WHAT SHE WOULD BE PROMOTED TO. SHE SAID THAT AT THIS PLANT YOU ARE NOT PROMOTED TO ANYTHING THEY ARE MACHINE GIRLS OR NOT. SHE AGREED SHE WAS REFERRING TO NEW EMPLOYEES. SHE SAID THAT THERE IS A PROBATIONAL PERIOD FOR NEW EMPLOYEES. SHE WAS ASKED IF SHE WAS REFERRING TO A QUESTION AS TO WHETHER THE GIRL WAS TO BE KEPT. THE WITNESS SAID SHE KNEW RIGHT OFF WHETHER A GIRL IS GOOD OR NOT.
52. ASKED WHAT HAPPENS WHEN A GIRL IS PROMOTED, THE WITNESS SAID THERE IS NO SUCH THING AS PROMOTION. SHE SAID THAT AT THE END OF 30 DAYS THE NEW EMPLOYEE WOULD RECEIVE A WAGE INCREASE. AT THE END OF 3 MONTHS SHE RECEIVES ANOTHER WAGE INCREASE. THIS IS WHAT SHE MEANS BY PROMOTION.

53. WHEN SHE WAS MADE A FORELADY HER DUTIES WERE EXPLAINED TO HER. SHE WAS NEVER TOLD SHE COULD SUSPEND AN EMPLOYEE NOR WAS SHE TOLD SHE COULD HIRE OR FIRE, OR RECOMMEND A WAGE INCREASE. SHE WAS NEVER TOLD SHE COULD SPEND MONEY ON BEHALF OF THE COMPANY OR ORDER GOODS.
54. SHE SAID THAT WHILE SHE RECEIVED HER SALARY, THE OTHER EMPLOYEES WERE NOT ON SALARY. SHE SAID THAT MR. BARRETT WAS EMPLOYED AFTER SHE RECEIVED HER HOURLY RATE.
55. SHE SAID THAT THE MEETINGS THAT SHE ATTENDS DEALING WITH PRODUCTION PROBLEMS AND PERFORMANCE OF EMPLOYEES ARE NOT FORMAL MEETINGS NOR DOES SHE RECEIVE A WRITTEN OR VERBAL NOTICE OF MEETINGS TO BE HELD AT A PARTICULAR TIME OR PLACE. THE WITNESS AGREED THAT IT WAS FAIR TO SUGGEST THEY JUST HAPPENED.
56. THE WITNESS WAS SHOWN AND IDENTIFIED EXHIBITS 1, 2, 3, 4, 5 AND 6, WHICH ARE ATTACHED TO THIS REPORT. EXHIBIT #1 IS A FACTORY PRODUCTION ORDER. IT IS A MACHINE ORDER SHE RECEIVES FROM THE OFFICE. ALL INFORMATION ON EXHIBIT #1 IS PREPARED IN THE OFFICE. THE INFORMATION SHOWN IS TRANSCRIBED TO EXHIBITS #2 AND 3. THE INFORMATION SHOWN ON EXHIBITS #2 AND 3 IS FOR THE INFORMATION OF THE OPERATORS AND GIRLS. WHEN THE WITNESS HAS COMPLETED EXHIBITS #2 AND 3, SHE THEN FILLS OUT EXHIBIT #4 AND 5. EXHIBIT #4 AND 5 ARE THEN ATTACHED TO THE FINISHED PRODUCT TO BE SHIPPED TO THE WAREHOUSE. PRIOR TO THE MATERIAL GOING TO THE WAREHOUSE THE COUNT, NUMBER, BUNDLES AND SKID NUMBER IS SHOWN ON EXHIBIT #4. THIS CAN BE DONE BY THE PERSON TRANSFERRING THE MATERIAL TO THE WAREHOUSE OR THE OPERATOR.
57. EXHIBIT #6 IS A HAND ASSEMBLY ORDER AND THAT THE SAME PROCEDURE FOR THE HAND ASSEMBLY ORDERS IS USED AS THE MACHINE RUN ORDER. SHE SAID THAT THE DOCUMENTS DEALING WITH THE HAND ASSEMBLY ORDERS ARE HANDED TO THE LEAD HAND AFTER THEY HAVE BEEN COMPLETED.
58. SHE SAID THAT THE MACHINE RUN ORDERS ARE NOT MADE UP BY THE LEAD HANDS, HOWEVER, THEY MAKE UP THE HAND RUN ORDERS. SHE SAID THAT SHE IS THE ONLY PERSON TO MAKE THE DOCUMENTS DEALING WITH THE MACHINE RUN ORDERS.

SECOND EXAMINATION BY MR. ARMSTRONG

59. THE WITNESS WAS ASKED HOW MANY LEAD HANDS WORK AT THE FACTORY AND SHE SAID THAT THERE IS ONE ON EACH SHIFT.
60. SHE SAID THAT DEALING WITH PROMOTIONS THERE IS A YEARLY INCREASE. HOWEVER, FOR NEW EMPLOYEES AFTER 30 DAYS THEY RECEIVE AN INCREASE AND AGAIN AFTER 3 MONTHS. SHE SAID THAT HER OPINION IS ASKED ON THE WORK PERFORMANCE OF NEW EMPLOYEES AFTER 30 DAYS AND AGAIN AT THE END OF 3 MONTHS, WHICH SHE GIVES VERBALLY.
61. THE WITNESS SAID THAT HER DUTIES AND RESPONSIBILITIES ARE THE SAME AS MRS. JOHNSTON'S. SHE SAID THAT SHE HAS NEVER ATTENDED A MEETING WHEN SHE AND MRS. JOHNSTON WERE BOTH PRESENT.
62. THE WITNESS SAID THAT IT IS HER RESPONSIBILITY AND MRS. JOHNSTON'S TO SEE THAT NEW GIRLS ARE ADEQUATELY TRAINED. SHE SAID THAT NO EMPLOYEE HAS EVER BEEN SUSPENDED, NOR HAS THERE BEEN AN ORDER FOR PAY TO BE REDUCED OR DOCKED, NOR HAS SHE HAD TO ISSUE A WRITTEN REPRIMAND.

SECOND EXAMINATION BY THE EXAMINER

63. THE WITNESS SAID THAT WITH RESPECT TO THE GIRL WHO WAS HIRED FOR THE SUMMER MONTHS AND TOLD TO CLOCK OUT BEFORE THE COMPLETION OF HER SHIFT, THIS HAPPENED A COUPLE OF YEARS AGO.

EXAMINATION OF MR. L. BARRETT QUESTIONED BY THE RESPONDENT

64. THE PARTIES AGREED THAT THE EXAMINATION OF MR. BARRETT IS RESTRICTED TO THE MATERIAL THAT FOLLOWS:
65. MR. BARRETT'S POSITION IS THAT OF PLANT MANAGER AND HE HAS BEEN AT THIS PLANT SINCE DECEMBER 15, 1965. HE SAID THAT THE AREA IN THE PLANT WHICH IS KNOWN AS THE PLANT PRODUCTION OFFICE IS 30 x 10, OF WOODEN STRUCTURE, LOCATED IN THE NORTH-WEST CORNER, RAISED ABOUT 4 OR 5 FEET OFF THE GROUND, WINDOWS ON ONE SIDE.

66. THE PLANT SUPERINTENDENT'S OFFICE IS A SEPARATE OFFICE WITHIN THE PLANT PRODUCTION OFFICE. THE REMAINDER OF THE OFFICE IS USED FOR THE PRODUCTION RECORDS, INVENTORY CONTROL RECORDS, SCHEDULE BOARD. THE FURNITURE CONSISTS OF 3 DESKS, ONE BENCH AND A FILING CABINET.
67. THE WITNESS WAS ASKED WHO USES THE PRODUCTION OFFICE. HE SAID SHIFT SUPERVISORS, FOREMEN, SET-UP MEN, ROLL RACKERS, DIE PREPARATION MEN, FORELADIES, LEAD HANDS, SALES SERVICE AND AN OFFICE CLERK. ALL USE THE THREE DESKS AND A BENCH. THE WITNESS WAS ASKED WHICH IS USED (IF ANY) BY THE FORELADIES. THE WITNESS SAID THE BENCH THAT IS IN THE NORTH-WEST CORNER. HE WAS ASKED IF ANYONE ELSE USES THE BENCH. HE SAID FEMALE LEAD HANDS AND THE ROLL RACKERS.
68. THE WITNESS SAID THAT THE FACTORY PRODUCTION ORDER FORM REFERRED TO AS EXHIBIT #1 IS USED TO PREPARE EXHIBIT #2, 3, 4 AND 5. THE INFORMATION ON EXHIBIT #1 IS TAKEN FROM IT AND TRANSCRIBED TO THE 4 EXHIBITS #2, 3, 4 AND 5.
69. THE WITNESS WAS ASKED WHAT EMPLOYEES WERE AUTHORIZED TO PREPARE EXHIBITS #2, 3, 4 AND 5. HE SAID HE WAS NOT SURE WITH REGARD TO EXHIBIT #2. EXHIBIT #3 CAN BE PREPARED BY THE CLERK, FORELADIES, LEAD HANDS AND ALL OPERATORS. EXHIBIT #4 CAN BE FILLED OUT BY A FORELADY, LEAD HAND, MALE MACHINE OPERATORS AND SOMETIMES THE SET-UP MEN. EXHIBIT #5 CAN BE PREPARED BY THE FORELADY, LEAD HAND, MACHINE OPERATORS, SET-UP MEN AND MACHINE GIRLS.
70. THE WITNESS SAID WITH RESPECT TO EXHIBITS #3, 4 AND 5, THE EMPLOYEES MENTIONED REGULARLY COMPLETE THE FORMS. HE SAID THAT THE EMPLOYEES ARE NOT PRIMARILY ASSIGNED TO DO THIS, BUT THEY DO IT. IT IS NECESSARY BEFORE THE SKID IS TAKEN AWAY.

EXAMINATION BY MR. ARMSTRONG

71. THE WITNESS WAS ASKED WITH RESPECT TO EXHIBITS #2, 3, 4 AND 5, IS IT NOT THE PRIMARY AND OBLIGED JOB OF THE FORELADY? THE WITNESS SAID HE COULD NOT BE SURE. HE WAS ASKED WHO WAS PRIMARILY ASSIGNED TO FILL IN EXHIBIT #2. THE WITNESS SAID "NOT SURE". THE WITNESS WAS ASKED

IF EXHIBIT #3 WAS PRIMARILY THE JOB OF THE FOREMAN, LEAD HAND OR OPERATOR AND HE SAID "NO ONE GROUP."

72. THE WITNESS WAS ASKED IF IT IS PRIMARILY THE RESPONSIBILITY OF THE FOREMAN OR THE FORELADY TO SEE THAT THE FORMS ARE COMPLETED. THE WITNESS SAID THAT THE FOREMAN IS RESPONSIBLE TO SEE THAT THEY ARE COMPLETED, AND THE FORELADY HAS THE SAME RESPONSIBILITY TO SEE THAT THE FORMS ARE COMPLETED, MORE SO THAN LEAD HANDS AND THIS IS TRUE WITH RESPECT TO ALL THE DOCUMENTS.

THE WITNESS WAS ASKED WHERE THE SET-UP AND ROLL RACKER MEN WORK. THE WITNESS SAID ON THE PRODUCTION FLOOR. THE DIE AND PREPARATION MEN WORK OUTSIDE OF THE MACHINE SHOP. LEAD HANDS ON THE PRODUCTION FLOOR. SALES SERVICE HAVE A SALES SERVICE OFFICE WHICH IS SEPARATE FROM THE PRODUCTION OFFICE.

THE WITNESS SAID THAT THE EMPLOYEES WHO USE THE PRODUCTION OFFICE REGULARLY ARE MR. SMITH, MR. WILSON, MRS. LITTLEFORD, MRS. DALE AND MRS. JOHNSTON.

SECOND EXAMINATION BY MR. GORDON

THE WITNESS WAS ASKED WHERE THE NORMAL WORK STATION OF THE FORELADIES IS. THE WITNESS SAID ON THE PRODUCTION FLOOR.

PARTIES WERE AFFORDED FULL OPPORTUNITY TO BE HEARD, TO EXAMINE AND CROSS-EXAMINE WITNESSES AND TO INTRODUCE EVIDENCE BEARING ON THE ISSUES BEFORE ME.

DATED AT TORONTO THIS 18TH DAY OF MAY, 1971.

"C. F. ROBICHEAU"
EXAMINER.

"J. E. C. ROBINSON"

924-71-M: THEODORE HOGETERP (APPLICANT) V. INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW), LOCAL 222 (RESPONDENT TRADE UNION) V. GENERAL MOTORS OF CANADA LIMITED (RESPONDENT EMPLOYER).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND P. J. O'KEEFFE.

DECISION OF J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBER P. J. O'KEEFFE.
APRIL 10, 1972.

1. COUNSEL FOR THE CHRISTIAN LABOUR ASSOCIATION OF CANADA, BY LETTER DATED FEBRUARY 24, 1972, HAS REQUESTED THE BOARD TO DELETE PARAGRAPH 12 FROM ITS DECISION DATED FEBRUARY 3, 1972 IN THIS MATTER ON THE GROUNDS THAT REFERENCE IS MADE TO THE CHRISTIAN LABOUR ASSOCIATION OF CANADA WHO IS NOT A PARTY AND ACCORDINGLY DID NOT HAVE AN OPPORTUNITY TO MAKE REPRESENTATIONS ON ITS OWN BEHALF IN THESE PROCEEDINGS.

2. ALTHOUGH THE CHRISTIAN LABOUR ASSOCIATION OF CANADA WAS SERVED WITH NOTICE OF HEARING IN THIS MATTER, IT WAS NOT A PARTY AND DID NOT PARTICIPATE AS A PARTY IN THESE PROCEEDINGS. WHILE PARAGRAPH 12 MAY SERVE AS A CAUTION TO CLAC WITH RESPECT TO ITS FUTURE ACTIVITIES, ESPECIALLY IF THE EVIDENCE ON WHICH THE BOARD BASED ITS COMMENTS CONTAINED IN PARAGRAPH 12 IS DESCRIPTIVE OF A COMMON PRACTICE OF THE CLAC, IT IS RECOGNIZED BY THE BOARD THAT BECAUSE CLAC WAS NOT A PARTY TO THESE PROCEEDINGS IT ACCORDINGLY IS NOT BOUND BY ANY OF THE BOARD'S COMMENTS MADE WITH RESPECT TO IT.

3. HOWEVER THAT MAY BE, IN ALL THE CIRCUMSTANCES OF THIS CASE WE ARE OF THE VIEW THAT NO USEFUL PURPOSE WOULD BE SERVED IF THE BOARD WERE TO DELETE PARAGRAPH 12 FROM ITS DECISION OF FEBRUARY 3, 1972 AS REQUESTED IN THE LETTER OF FEBRUARY 24TH.

DECISION OF BOARD MEMBER J. D. BELL: APRIL 10, 1972.

AGAIN I DISASSOCIATE MYSELF FROM THE VIEWS AND OPINION EXPRESSED BY THE MAJORITY IN PARAGRAPH 12 OF THE DECISION OF FEBRUARY 3, 1972 AND WOULD DIRECT ITS DELETION.

1668-71-JD: TORONTO TYPOGRAPHICAL UNION No. 91, I.T.U. (COMPLAINANT) V. SOUTHAM-MURRAY, A DIVISION OF SOUTHAM PRINTING COMPANY LIMITED AND TORONTO PHOTO ENGRAVERS UNION, LOCAL 35, P.L.P.I.U. (RESPONDENTS).

BEFORE: FRANK V. BOSCARIOL, VICE-CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND P. J. O'KEEFFE.

APPEARANCES AT THE HEARING: IAN SCOTT AND BALFOUR MACKENZIE FOR THE COMPLAINANT; H. A. BERESFORD, F. R. SMITH, R. C. SMITH AND E. E. KING FOR THE RESPONDENTS.

DECISION OF THE BOARD: APRIL 12, 1972.

1. THE NAME "TORONTO PHOTO ENGRAVERS UNION, LOCAL 35, I.P.E.U. OF N.A." APPEARING IN THE STYLE OF CAUSE OF THIS APPLICATION AS ONE OF THE RESPONDENTS IS AMENDED TO READ: "TORONTO PHOTO ENGRAVERS UNION, LOCAL 35, P.L.P.I.U."

2. THE COMPLAINANT TRADE UNION REQUESTS THAT THE BOARD ISSUE A DIRECTION PURSUANT TO THE PROVISIONS OF SECTION 81 OF THE LABOUR RELATIONS ACT WITH RESPECT TO AN ASSIGNMENT OF WORK MADE BY THE RESPONDENT COMPANY TO THE RESPONDENT TRADE UNION.

3. THE WORK WHICH IS THE SUBJECT OF DISPUTE BETWEEN THE PARTIES HAS BEEN HERETOFORE PERFORMED BY THE STAFF OF THE CUSTOMER ITSELF, NAMELY EATON'S OF CANADA LTD. HOWEVER, A SUBSEQUENT CHANGE IN POLICY PROVIDED THAT THE WORK WOULD IN THE FUTURE BE PERFORMED BY EMPLOYEES OF THE RESPONDENT COMPANY UPON THE LATTER'S PREMISES. PRIOR TO THE ACTUAL TRANSFER OF THIS OPERATION (WHICH AS OF THE DATE OF THIS APPLICATION HAS NOT TAKEN PLACE), THE RESPONDENT ASSIGNED THE WORK IN DISPUTE TO ITS PHOTOENGRAVERS EMPLOYED IN ITS TYPE DEPARTMENT. IT IS THE CONTENTION OF THE COMPLAINANT THAT THIS WORK FALLS WITHIN THE AMBIT OF ITS CRAFT AND THEREFORE SHOULD HAVE PROPERLY BEEN ASSIGNED TO THE COMPOSITORS EMPLOYED IN THE COMPOSING ROOM OF THE RESPONDENT COMPANY.

4. AT THE HEARING OF THIS MATTER ON MARCH 29, 1972, THE COMPLAINANT ASSERTED THAT THE WORK IN DISPUTE IS PART OF A PROCESS WHICH REPLACED WORK TRADITIONALLY PERFORMED BY IT. IN THIS REGARD, EVIDENCE WAS ADDUCED BEFORE THE BOARD TRACING THE TECHNIQUES INVOLVED FROM THE TRADITIONAL "HOT METAL" PROCESS, FOLLOWED BY THE OFFSET PROCESS TO THE PHOTON PROCESS AND FINALLY TO THE FOTOTRONIC PROCESS, WHICH IS THE AREA IN WHICH THE PRESENT DISPUTE ARISES.

5. HAVING REGARD TO ALL OF THE EVIDENCE WE ARE SATISFIED THAT THE WORK ASSOCIATED WITH THE "FILM ON ACETATE" PRODUCT RESULTING FROM THE FOTOTRONIC MACHINE AND PROCESSOR, DISPLACES THE WORK TRADITIONALLY PERFORMED BY THE COMPLAINANT WITH RESPECT TO THE THREE PRIOR PROCESSES AS ENUMERATED IN PARAGRAPH #4 HEREIN.

6. WE ARE ALSO SATISFIED, THAT THE WORK ASSOCIATED WITH THE "FILM ON ACETATE" PRODUCT (AND WHICH WAS FORMERLY PERFORMED BY THE STAFF OF EATON'S) WOULD EMBRACE ALL SETTING OF TYPE INCLUDING MAKE-UP, ASSEMBLY AND CORRECTIONS (BOTH ZONE CHANGES AND LAST MINUTE CHANGES) UP TO AND INCLUDING FINAL FILMS.

7. THE RESPONDENT UNION, SUBMITTED THAT ON THE BASIS OF EFFICIENCY AND ECONOMY IN THE PERFORMANCE OF THE WORK IN DISPUTE, THE BOARD SHOULD NOT DISTURB THE ASSIGNMENT. IN THIS REGARD THE BOARD FINDS THAT THERE IS INSUFFICIENT EVIDENCE TO SUPPORT SUCH A FINDING. THE RESPONDENT COMPANY MADE NO REPRESENTATION ON THIS SUBJECT.

8. HAVING REGARD TO THE FOREGOING CONSIDERATIONS, THE BOARD ACCORDINGLY DIRECTS THAT THE RESPONDENT SOUTHAM-MURRAY, A DIVISION OF SOUTHAM PRINTING COMPANY LIMITED, ASSIGN THE WORK INVOLVED IN CONNECTION WITH THE "FILM ON ACETATE" PRODUCT INCLUDING ORIGINAL TYPESETTING, ZONE CHANGES, ALTERATIONS AND ASSEMBLY UP TO AND INCLUDING FINAL FILMS, TO EMPLOYEES WHO ARE REPRESENTED BY THE TORONTO TYPOGRAPHICAL UNION No. 91, I.T.U.

1479-71-U: THOMAS J. BERRY (COMPLAINANT) v. CIVIL SERVICE OF ONTARIO, INC. (RESPONDENT).

BEFORE: G. W. REED, Q.C., CHAIRMAN, AND BOARD MEMBERS E. BOYER AND H.J.F. ADE.

DECISION OF THE BOARD:

APRIL 12, 1972.

1. THIS IS A COMPLAINT UNDER SECTION 79 OF THE LABOUR RELATIONS ACT IN WHICH THE COMPLAINANT ALLEGES THAT HE AND OTHER NON-MEMBERS OF THE RESPONDENT UNION HAVE BEEN DEALT WITH BY THE RESPONDENT CONTRARY TO SECTION 60 OF THE ACT. A FIELD OFFICER WAS APPOINTED TO INQUIRE INTO THE COMPLAINT AND, IN DUE COURSE, HE REPORTED THAT HE HAD EFFECTED A SETTLEMENT OF THE MATTER. THE COMPLAINANT SUBSEQUENTLY ALLEGED THAT THE RESPONDENT HAD FAILED TO CARRY OUT THE TERMS OF SETTLEMENT AND NOW ASKS THAT THE BOARD LIST THE COMPLAINT FOR HEARING.

2. IN ALL THE CIRCUMSTANCES OF THIS CASE THE BOARD DEEMS IT ADVISABLE TO AUTHORIZE THE DISCLOSURE OF THE INFORMATION FURNISHED TO AND RECEIVED BY THE FIELD OFFICER. THE FOLLOWING FACTS WOULD NOT APPEAR TO BE IN DISPUTE. THE RESPONDENT UNION IS THE BARGAINING AGENT FOR THE OFFICE, CLERICAL, LABORATORY AND TECHNICAL STAFF OF THE UNIVERSITY OF GUELPH. THE COMPLAINANT IS AN EMPLOYEE IN THE BARGAINING UNIT, BUT IS NOT A MEMBER OF THE RESPONDENT UNION. MR. CALVIN B. HUTCHINS IS THE CHIEF STEWARD OF THE UNIVERSITY OF GUELPH BRANCH OF THE RESPONDENT UNION. HE IS ALSO A MEMBER AND CHAIRMAN OF THE UNIVERSITY STANDING COMMITTEE ON PARKING. APPARENTLY ALL SEGMENTS OF THE UNIVERSITY ARE REPRESENTED ON THE COMMITTEE AND MR. HUTCHINS REPRESENTS THE SEGMENT COMPOSED OF THE EMPLOYEES IN THE BARGAINING UNIT REPRESENTED BY THE RESPONDENT UNION.

3. THE STANDING COMMITTEE ON PARKING ISSUED AN INTERIM REPORT ON THEIR RECOMMENDATIONS. ITEM 23 OF THE REPORT PROVIDED AS FOLLOWS:

23. MEMBERS OF THE STANDING COMMITTEE ON PARKING SHALL PRESENT THESE RECOMMENDATIONS TO THE SEGMENT OF THE UNIVERSITY COMMUNITY WHICH THEY REPRESENT, AND SHALL REPORT TO THE COMMITTEE THE APPROVAL OR NON-APPROVAL OF THE MAJORITY OF THE MEMBERS OF EACH SEGMENT.

IN DECEMBER, 1971 THE COMPLAINANT WROTE MR. HUTCHINS INQUIRING WHEN THE MEETING REFERRED TO IN ITEM 23 WOULD BE HELD. THE COMPLAINANT WAS NOT SATISFIED WITH THE REPLY, WHICH SEEMED TO INDICATE THAT MR. HUTCHINS WAS NOT GOING TO CALL SUCH A MEETING BUT INSTEAD INTENDED MEETING ONLY WITH THE EXECUTIVE OF THE RESPONDENT. THE PRESENT COMPLAINT WAS THEREFORE FILED ALLEGING THAT THE RESPONDENT HAD ACTED IN AN ARBITRARY AND DISCRIMINATORY MANNER AND IN BAD FAITH IN NOT PROVIDING A FORUM FOR THE NON-MEMBERS IN THE BARGAINING UNIT TO EXPRESS THEIR VIEWS.

4. AS A RESULT OF THE EFFORTS OF THE FIELD OFFICER APPOINTED TO INQUIRE INTO THE COMPLAINT, THE SOLICITOR FOR THE RESPONDENT WROTE TO THE FIELD OFFICER AS FOLLOWS:

FURTHER TO OUR TELEPHONE CONVERSATION TODAY, I HAVE SPOKEN TO MR. BOWEN OF THE CIVIL SERVICE ASSOCIATION OF ONTARIO (INC.) AND HE HAS ADVISED ME THAT HE WILL SEE THAT A PUBLIC MEETING IS HELD TO APPEASE MR. BERRY. I TRUST THIS WILL TAKE CARE OF THE MATTER AND THAT THE SECTION 79 COMPLAINT WILL BE DISMISSED.

THIS COMMUNICATION WAS PASSED ON TO THE COMPLAINANT WHO, IN TURN, WROTE TO THE FIELD OFFICER STATING THAT HE FOUND THE SETTLEMENT OFFERED BY THE RESPONDENT "TO FULFILL THIS COMMITMENT TO THE UNIVERSITY OF GUELPH COMMITTEE ON PARKING AND THE OFFICE, CLERICAL, LABORATORY AND TECHNICAL STAFF OF THE UNIVERSITY OF GUELPH, TO OBTAIN THEIR APPROVAL OR REJECTION OF THE PARKING REGULATIONS BY HOLDING A MEETING" SATISFACTORY.

5. BY A MEMORANDUM DATED MARCH 6, 1972 FROM MR. HUTCHINS, CHAIRMAN, STANDING COMMITTEE ON PARKING, AND CIRCULATED MARCH 7TH VIA UNIVERSITY OF GUELPH CAMPUS MAIL TO THE MEMBERS OF THE RESPONDENT UNION BARGAINING UNIT, THE EMPLOYEES IN QUESTION WERE INVITED TO ATTEND A GENERAL MEETING TO DISCUSS THE POLICIES OF FUTURE PAID PARKING. THE MEETING WAS SCHEDULED TO TAKE PLACE ON MARCH 8TH AT 4:30 P.M. IN ONE OF THE UNIVERSITY BUILDINGS. THOSE WHO COULD NOT ATTEND WERE URGED TO EXPRESS THEIR VIEWS IN WRITING TO THE SECRETARY OF THE COMMITTEE. THE MEMORANDUM ALSO OUTLINED FIVE DIFFERENT PARKING PLANS WHICH HAD BEEN DRAWN UP

BY SOME UNIDENTIFIED COMMITTEE OF WHICH MR. GRAUPNER, THE ASSISTANT DIRECTOR OF PHYSICAL RESOURCES FOR THE UNIVERSITY, WAS A MEMBER.

6. THE MEETING TOOK PLACE AS SCHEDULED. ACCORDING TO THE RESPONDENT ONLY 40 PERSONS ATTENDED, ALTHOUGH OVER 600 NOTICES HAD BEEN MAILED OUT. THE COMPLAINANT WAS PRESENT. THE VARIOUS PLANS SET OUT IN THE NOTICE OF THE MEETING WERE DISCUSSED AND APPARENTLY MESSRS. HUTCHINS AND GRAUPNER SPOKE IN SUPPORT THEREOF. A MOTION REJECTING THE PRINCIPLE OF PAID PARKING WAS CARRIED. APPARENTLY THE COMPLAINANT WAS THE SECONDER ON THE MOTION. DURING THE MEETING THE COMPLAINANT ASKED MR. HUTCHINS IF IT WAS CALLED TO FULFILL THE SETTLEMENT OF HIS COMPLAINT. HUTCHINS, ACCORDING TO THE COMPLAINANT, REFUSED TO RECOGNIZE, ANSWER, OR DISCUSS THIS QUESTION AND STATED THAT THE MEETING WAS CALLED TO APPROVE ONE OF THE PLANS OUTLINED IN THE NOTICE. THE COMPLAINANT THEN ASKED IF THE MEETING WAS CALLED BY THE RESPONDENT OR THE UNIVERSITY. HUTCHINS' ANSWER WAS THAT IT WAS CALLED BY HIM AS CHAIRMAN OF THE COMMITTEE ON PARKING. ACCORDING TO THE COMPLAINANT, HUTCHINS THEN STATED HE WOULD ALLOW NO FURTHER QUESTIONS UNLESS THEY HAD TO DO WITH THE PLANS OUTLINED IN THE NOTICE OF MEETING AND THAT THIS WAS WHY THE MEETING WAS CALLED.

7. THE COMPLAINANT HAS INFORMED THE FIELD OFFICER THAT HE IS NOT SATISFIED THAT THE TERMS OF SETTLEMENT HAD BEEN FULFILLED, SINCE HE IS OF THE OPINION THAT THE RESPONDENT HAD NOTHING TO DO WITH THE MEETING. THE COMPLAINANT FURTHER INFORMED THE FIELD OFFICER THAT HE IS OPPOSED TO THE POLICY OF PAID PARKING AND HE DEMANDS THAT THE RESPONDENT UNION CONVENE A MEETING OF ALL BARGAINING UNIT EMPLOYEES OFF THE PROPERTY OF THE UNIVERSITY AND WITHOUT ANY MEMBER OF THE UNIVERSITY ADMINISTRATION IN ATTENDANCE. THIS THE RESPONDENT REFUSES TO DO. THE COMPLAINANT ASKS FOR A HEARING BEFORE THE BOARD.

8. IN CONSIDERING THIS REQUEST WE SHALL ASSUME THAT ALL THE FACTS, AS OUTLINED ABOVE, COULD BE ESTABLISHED IN EVIDENCE BY THE COMPLAINANT. HIS CASE BEGINS WITH RECOMMENDATION No. 23 OF THE COMMITTEE. WITHOUT IT HE COULD HAVE NO CASE. THE ONLY OBLIGATION ON MR. HUTCHINS WAS TO PRESENT THE RECOMMENDATIONS OF THE COMMITTEE TO THE SEGMENT OF THE UNIVERSITY COMMUNITY WHICH HE REPRESENTED FOR THE APPROVAL OR NON-APPROVAL OF THE MAJORITY OF SUCH PERSONS. THERE IS NOTHING IN THE RECOMMENDATION STATING HOW THIS SHOULD BE DONE. THE RESPONDENT UNION, THROUGH ITS SOLICITOR, ULTIMATELY AGREED TO HOLD A PUBLIC MEETING. NOTHING MORE WAS UNDERTAKEN, YET THE COMPLAINANT FOUND THIS TO BE SATISFACTORY. NOTICE OF A MEETING WAS GIVEN TO ALL EMPLOYEES IN THE BARGAINING UNIT "TO DISCUSS POLICIES OF FUTURE PAID PARKING". AT THE MEETING A MOTION IN WHICH THE COMPLAINANT PARTICIPATED WAS ENTERTAINED TO REJECT THE PRINCIPLE OF PAID PARKING. THIS WAS CARRIED. THOSE WHO DID NOT ATTEND THE MEETING WERE URGED TO MAKE THEIR VIEWS KNOWN IN WRITING TO THE SECRETARY OF THE COMMITTEE ON PARKING. WHILE IT MAY

BE THAT THE MEETING WAS NOT A MEETING CALLED BY THE RESPONDENT, IT WAS CERTAINLY A MEETING OF WHICH NOTICE WAS GIVEN TO ALL EMPLOYEES IN THE BARGAINING UNIT REPRESENTED BY THE RESPONDENT. THE FACT THAT IT WAS HELD ON UNIVERSITY PROPERTY AND THAT A MEMBER OF THE UNIVERSITY ADMINISTRATION WAS IN ATTENDANCE CANNOT DETRACT FROM THE FACT THAT ALL BARGAINING UNIT EMPLOYEES HAD AN OPPORTUNITY TO ATTEND AND EXPRESS THEIR VIEWS ON THE POLICIES OF FUTURE PAID PARKING. THE COMPLAINANT DID SO AND WAS SUCCESSFUL IN HAVING A MOTION CARRIED WHICH REJECTED THE PRINCIPLE. IN THESE CIRCUMSTANCES WE ARE UNABLE TO SEE HOW IT CAN BE SAID THAT MR. HUTCHINS HAS FAILED TO CARRY OUT HIS OBLIGATION TO PRESENT THE RECOMMENDATIONS OF THE COMMITTEE TO THE SEGMENT OF THE UNIVERSITY COMMUNITY WHICH HE REPRESENTED FOR THEIR APPROVAL OR DISAPPROVAL.

9. EVEN IF WE WERE TO ASSUME THAT AT THE TIME THE APPLICATION WAS FILED THE RESPONDENT WAS IN VIOLATION OF SECTION 60 AND, FURTHER, THAT THE MEETING ULTIMATELY HELD WAS NOT CALLED BY THE RESPONDENT CONTRARY TO ITS UNDERTAKING TO CALL "A PUBLIC MEETING", WHAT USEFUL PURPOSE WOULD BE SERVED BY PUTTING THIS COMPLAINT ON FOR A FINAL HEARING? AS WAS POINTED OUT EARLIER, THE GIST OF THE COMPLAINT WAS THE ALLEGED FAILURE OF MR. HUTCHINS TO GIVE NON-MEMBERS OF THE RESPONDENT AN "OPPORTUNITY TO PRESENT THEIR VIEWS FOR CONSIDERATION." THAT IS ALL THAT WAS REQUIRED BY RECOMMENDATION 23 AS SET OUT ABOVE. THE NON-MEMBERS, INDEED ALL EMPLOYEES IN THE BARGAINING UNIT, HAVE HAD THAT OPPORTUNITY. WE ARE UNABLE TO APPRECIATE HOW THE BOARD COULD GRANT ANY OTHER RELIEF TO THE COMPLAINANT, EVEN AFTER A FORMAL HEARING. IN THESE CIRCUMSTANCES, WE HAVE COME TO THE CONCLUSION THAT THIS IS NOT A CASE WHERE THE BOARD OUGHT TO INQUIRE FURTHER INTO THE COMPLAINT BY MEANS OF A FORMAL HEARING. IF THE COMPLAINANT IS OF THE OPINION THAT THE BOARD HAS ERRED IN SOME MATERIAL WAY, IT IS ALWAYS OPEN TO HIM TO REQUEST THE BOARD TO RECONSIDER ITS DECISION UNDER SECTION 95(1) OF THE ACT.

10. THE COMPLAINT IS DISMISSED.

1308-71-U: PERCY WOODS (COMPLAINANT) v. LOCAL 4912 OF THE UNITED STEEL WORKERS (RESPONDENT).

BEFORE: G. W. REED, Q.C., CHAIRMAN, AND BOARD MEMBERS E. BOYER AND F. W. MURRAY.

DECISION OF THE BOARD: APRIL 14, 1972.

1. THIS IS A COMPLAINT UNDER SECTION 79 OF THE LABOUR RELATIONS ACT IN WHICH THE COMPLAINANT ALLEGES THAT HE HAS BEEN DEALT WITH BY THE RESPONDENT TRADE UNION CONTRARY TO SECTION 60 OF THE ACT. A FIELD OFFICER WAS APPOINTED UNDER SECTION 79 AND, FOLLOWING THE SUBMISSION OF

HIS REPORT TO THE BOARD, THE MATTER WAS LISTED FOR HEARING IN KINGSTON TO ENABLE THE COMPLAINANT TO SHOW CAUSE WHY THE BOARD SHOULD PROCEED TO INQUIRE FURTHER INTO THE COMPLAINT BY MEANS OF A HEARING.

2. MR. WOODS' COMPLAINT RELATES TO TWO SEPARATE MATTERS. THE FIRST IS WITH RESPECT TO THE ALLEGED FAILURE OF THE RESPONDENT TO REPRESENT MR. WOODS, A MEMBER OF THE RESPONDENT, IN CONNECTION WITH PROCEEDINGS UNDER THE WORKMEN'S COMPENSATION ACT. THE SECOND MATTER CONCERNS THE ALLEGED FAILURE BY THE RESPONDENT TO LODGE A GRIEVANCE IN CONNECTION WITH MR. WOODS' TERMINATION OF EMPLOYMENT WITH NAPANEE INDUSTRIES LIMITED.

3. IN SO FAR AS THE WORKMEN'S COMPENSATION ACT PROCEEDINGS ARE CONCERNED, THESE AROSE INITIALLY OUT OF A FALL FROM A LADDER WHILE MR. WOODS WAS AT WORK IN APRIL, 1968. HE WAS GRANTED COMPENSATION AND ULTIMATELY RETURNED TO WORK FEBRUARY 10, 1969. THEREAFTER HE DEVELOPED BACK TROUBLE WHICH HE ALLEGED WAS ATTRIBUTABLE TO HIS EARLIER FALL. THERE FOLLOWED FURTHER PROCEEDINGS BEFORE THE WORKMEN'S COMPENSATION BOARD WHICH CULMINATED IN AN APPEAL TO THE MEMBERS OF THE BOARD, THE LAST FORM OF APPEAL PROVIDED FOR UNDER THE ACT. THIS APPEAL WAS HEARD BY THE BOARD MEMBERS FOR UNDER THE ACT. THIS APPEAL WAS HEARD BY THE BOARD MEMBERS ON JANUARY 13, 1971. THEIR WRITTEN DECISION, DENYING THE CLAIM OF MR. WOODS, WAS HANDED DOWN ON MARCH 4, 1971.

4. SECTION 60 OF THE LABOUR RELATIONS ACT, UNDER WHICH THE COMPLAINANT FOUNDS HIS PRESENT CLAIM, DID NOT COME INTO EFFECT UNTIL FEBRUARY 15, 1971. SECTION 60 IS NOT A PROCEDURAL SECTION AND THUS DOES NOT HAVE RETROSPECTIVE EFFECT. SEE YVON ROBICHAUD CASE, [1971] OLRB REP. 305. IT FOLLOWS, THEREFORE, THAT MR. WOODS' COMPLAINT IN THESE PROCEEDINGS MUST BE FOUNDED ON ACTS OR OMISSIONS OF THE RESPONDENT UNION ON OR AFTER FEBRUARY 15, 1971. IT IS THEREFORE CLEAR THAT HIS COMPLAINT CANNOT RELATE TO ANY OF THE PROCEEDINGS BEFORE THE WORKMEN'S COMPENSATION BOARD UP TO AND INCLUDING THE HEARING BEFORE THE BOARD ON JANUARY 13, 1971 OR TO THE DECISION OF THE BOARD FOLLOWING THAT HEARING.

5. FOLLOWING THE ISSUANCE OF THE COMPENSATION BOARD'S DECISION OF MARCH 4, 1971, THE COMPLAINANT WAS STILL DISSATISFIED WITH THE DECISION AND FURTHER COMMUNICATIONS AND DISCUSSIONS TOOK PLACE BETWEEN MR. WOODS AND MR. GAREAU, A REPRESENTATIVE OF LOCAL 4912'S PARENT ORGANIZATION. MR. GAREAU'S POSITION WAS THAT FURTHER PROCEEDINGS WOULD BE USELESS UNLESS NEW EVIDENCE WAS AVAILABLE SHOWING THAT PREVIOUS DIAGNOSTIC REPORTS WERE WRONG. IN AN ATTEMPT TO ASCERTAIN WHETHER SUCH EVIDENCE MIGHT BE AVAILABLE, MR. GAREAU ARRANGED FOR MR. WOODS TO BE EXAMINED BY ANOTHER DOCTOR, DR. M. A. ASHWORTH OF KINGSTON. THE EXAMINATION TOOK PLACE AND DR. ASHWORTH'S REPORT WAS CONFIRMATORY OF EARLIER REPORTS, THAT IS, HE COULD NOT ATTRIBUTE THE

BACK AILMENT TO THE FALL SUSTAINED BY MR. WOODS IN 1968. IN THESE CIRCUMSTANCES, MR. GAREAU TOOK THE POSITION THAT A FURTHER APPEAL TO THE COMPENSATION BOARD WOULD BE FRUITLESS AND A WASTE OF TIME UNLESS IT COULD BE SHOWN, BASED ON COMPETENT EVIDENCE FROM A QUALIFIED ORTHOPAEDIC SURGEON, THAT PREVIOUS DIAGNOSES WERE INCORRECT.

6. SECTION 60 OF THE LABOUR RELATIONS ACT IMPOSES A DUTY ON A TRADE UNION NOT TO ACT IN A MANNER THAT IS ARBITRARY, DISCRIMINATORY OR IN BAD FAITH IN THE REPRESENTATION OF ANY OF THE EMPLOYEES IN THE BARGAINING UNIT FOR WHOM IT IS THE BARGAINING AGENT. ASSUMING, BUT WITHOUT DECIDING, THAT "REPRESENTATION" AS USED IN SECTION 60 WOULD INCLUDE THE REPRESENTATION OF AN EMPLOYEE IN CONNECTION WITH A WORKMEN'S COMPENSATION CLAIM, THERE IS NOTHING IN THE EVIDENCE AND MATERIALS BEFORE THE BOARD WHICH SUGGESTS IN ANY WAY THAT SINCE FEBRUARY 15, 1971 THE RESPONDENT TRADE UNION ACTED IN AN ARBITRARY OR DISCRIMINATORY MANNER OR IN BAD FAITH TOWARDS THE COMPLAINANT WITH RESPECT TO HIS COMPENSATION CLAIM. ON THE CONTRARY, DESPITE THE FINAL REJECTION OF MR. WOODS' CLAIM IN MARCH, MR. GAREAU WAS PREPARED TO LAUNCH A "FURTHER APPEAL" IF NEW EVIDENCE WAS FORTHCOMING. MR. GEREAU ARRANGED FOR A FURTHER EXAMINATION, AND WHEN THE REPORT WAS UNFAVOURABLE, ONLY THEN DECLINED TO PROCEED. THIS DECISION WAS NOT ARBITRARY IN THAT HE ACTED ON THE EVIDENCE BEFORE HIM. THERE IS NOTHING TO SUGGEST THAT THE DECISION WAS DISCRIMINATORY, THAT IS, THERE IS NOTHING TO SUGGEST, FOR EXAMPLE, THAT IN SIMILAR CIRCUMSTANCES AN APPEAL WOULD HAVE BEEN LAUNCHED ON BEHALF OF SOME OTHER EMPLOYEE. FINALLY, THERE IS NO EVIDENCE WHATSOEVER OF BAD FAITH. ON THE CONTRARY, ALL THE EVIDENCE POINTS TO THE GOOD FAITH OF THE UNION REPRESENTATIVE.

7. MR. WOODS SUGGESTED THAT THERE WAS EVIDENCE THAT WAS NOT PRESENTED TO THE COMPENSATION BOARD WITH RESPECT TO THE MEANING OF "DEGENERATION" AND THAT THE UNION SHOULD HAVE GONE MORE INTO HIS MEDICAL HISTORY, USING THE DEFINITION OF "DEGENERATION". MR. WOODS FURTHER SUGGESTED THE UNION SHOULD HAVE DONE MORE THAN MERELY ACCEPT THE REPORT OF DR. ASHWORTH. ASSUMING THIS TO BE THE CASE (AND OF COURSE THIS BOARD IS IN NO POSITION TO MAKE A JUDGMENT ON THIS ASPECT OF THE PRESENTATION), THERE IS NO SUGGESTION BEFORE US THAT THIS ALLEGED NEW EVIDENCE WAS PRESENTED TO THE RESPONDENT UNION. HOWEVER, EVEN IF IT WAS, THERE IS NOTHING TO SUGGEST THAT, IN REJECTING MR. WOODS' SUGGESTION AND MAKING ITS DECISION BASED ON DR. ASHWOOD'S REPORT, MR. GAREAU'S ACTIONS COULD BE CONSIDERED ARBITRARY, DISCRIMINATORY OR IN BAD FAITH.

8. IN THE RESULT, THEREFORE, THE COMPLAINT, IN SO FAR AS IT IS BASED ON THE WORKMEN'S COMPENSATION PROCEEDINGS, IS DISMISSED.

9. THE NEXT PROBLEM TO BE CONSIDERED IS THE COMPLAINANT'S CLAIM

THAT THE RESPONDENT UNION SHOULD HAVE FILED A GRIEVANCE ON HIS BEHALF IN JUNE, 1971. THE MATERIALS AND EVIDENCE BEFORE US ON THIS ASPECT OF THE COMPLAINT ARE NOT NEARLY SO COMPLETE AS THOSE CONSIDERED IN RELATION TO THE WORKMEN'S COMPENSATION COMPLAINT. MORE SPECIFICALLY, WHILE THERE IS SOME EVIDENCE, THE MEDICAL REPORTS, TENDING TO SUPPORT THE COMPLAINANT'S CASE, WE ARE UNABLE TO JUDGE THE CONTENTIONS OF THE RESPONDENT IN RELATION TO THE EVENTS THAT OCCURRED. WHILE THE RESPONDENT MAY HAVE A VALID DEFENCE, THIS CAN ONLY BE ESTABLISHED THROUGH EVIDENCE.

10. IN THESE CIRCUMSTANCES, WE ARE OF THE OPINION THAT THE BOARD SHOULD INQUIRE INTO MR. WOODS' COMPLAINT BY MEANS OF A HEARING BY THE BOARD. THE HEARING OF THIS COMPLAINT WILL BE RESTRICTED TO THAT ASPECT OF THE COMPLAINT CONCERNING THE ALLEGED FAILURE OF THE RESPONDENT UNION TO FILE A GRIEVANCE ON MR. WOODS' BEHALF IN THE SUMMER OF 1971.

1317-71-U: PERCY WOODS (COMPLAINANT) V. NAPANEE INDUSTRIES (RESPONDENT).

BEFORE: G. W. REED, Q.C., CHAIRMAN, AND BOARD MEMBERS E. BOYER AND F. W. MURRAY.

APPEARANCES AT THE HEARING: PERCY WOODS FOR THE COMPLAINANT, AND R. P. O'CALLAGHAN AND R. F. CURRAN FOR THE RESPONDENT.

DECISION OF THE BOARD: APRIL 14, 1972.

1. THIS IS A COMPLAINT UNDER SECTION 79 OF THE LABOUR RELATIONS ACT IN WHICH THE COMPLAINANT, WHO IS ALSO THE GRIEVOR, REQUESTS THAT HE BE PAID COMPENSATION OR REINSTATED TO EMPLOYMENT OR BOTH. A FIELD OFFICER WAS APPOINTED TO INQUIRE INTO THE COMPLAINT, AS PROVIDED FOR IN SECTION 79(1) AND, FOLLOWING THE RECEIPT OF HIS REPORT, THE MATTER WAS LISTED FOR HEARING IN KINGSTON TO ENABLE THE COMPLAINANT TO SHOW CAUSE WHY THE BOARD SHOULD PROCEED TO INQUIRE FURTHER INTO THE COMPLAINT BY MEANS OF A HEARING. IN THE INTERVAL BETWEEN THE DATE WHEN THE FIELD OFFICER INTERVIEWED THE COMPLAINANT AND THE DATE OF THE HEARING, THE COMPLAINANT SENT MANY LETTERS TO THE BOARD WHICH COMMUNICATIONS CONTAINED FURTHER SUBMISSIONS IN SUPPORT OF HIS COMPLAINT. COPIES OF ALL THESE DOCUMENTS WERE SUPPLIED TO THE RESPONDENT AND HAVE BEEN FULLY CONSIDERED BY THE BOARD.

2. THE COMPLAINT RELATES TO TWO DIFFERENT MATTERS. IN THE FIRST PLACE, THE COMPLAINANT ALLEGES HE IS ENTITLED TO FURTHER COMPENSATION FROM THE WORKMEN'S COMPENSATION BOARD. WITH RESPECT TO THIS ALLEGATION, IT WAS ESTABLISHED THAT MR. WOODS FELL FROM A LADDER AND BROKE HIS LEFT

ANKLE WHILE EMPLOYED BY THE RESPONDENT IN MARCH OF 1967. HE WAS SUBSEQUENTLY AWARDED COMPENSATION WHICH HE IS IN FACT STILL RECEIVING, AT LEAST IN PART. FOLLOWING HIS RETURN TO WORK, HE DEVELOPED A BACK AILMENT WHICH HE ALLEGED FLOWED FROM HIS EARLIER FALL. THIS COMPLAINT LED TO A NUMBER OF MEDICAL EXAMINATIONS, HEARINGS AND APPEALS BEFORE THE WORKMEN'S COMPENSATION BOARD, WHICH REJECTED THE CLAIM ON THE GROUND THAT THE AILMENT IN QUESTION RESULTED FROM A DEGENERATIVE DISEASE AND NOT THE EARLIER FALL.

3. AS WAS POINTED OUT IN AN EARLIER DECISION OF THIS BOARD IN A SIMILAR CASE INVOLVING THE SAME PARTIES (BOARD FILE No. 997-71-U), "IT IS QUITE CLEAR THAT THIS BOARD HAS NO JURISDICTION TO SIT IN APPEAL FROM A DECISION OF THE WORKMEN'S COMPENSATION BOARD." AT THE HEARING OF THE PRESENT CASE IN KINGSTON, THIS FACT WAS AGAIN POINTED OUT IN SOME DETAIL TO THE COMPLAINANT. THE COMPLAINANT WAS UNABLE TO PRESENT ANY ARGUMENT AGAINST THIS POSITION, ALTHOUGH GIVEN EVERY OPPORTUNITY TO DO SO. IF HE STILL DOES NOT ACCEPT THIS FACT, WE KNOW OF NO WAY IN WHICH WE COULD SPELL OUT MORE CLEARLY THAN WE DID THE FACT THAT THIS BOARD HAS NO JURISDICTION OVER WORKMEN'S COMPENSATION MATTERS.

4. THE SECOND PART OF THE COMPLAINT RELATES TO THE DISCHARGE OF THE COMPLAINANT BY THE RESPONDENT IN JUNE OF 1971. MR. WOODS ALLEGES THAT HIS DISCHARGE AND THE FAILURE OF THE RESPONDENT TO EMPLOY HIM IN SOME CAPACITY IS CONTRARY TO SECTION 79(1)(A) AND SECTION 60 (FORMERLY SECTION 51A) OF THE LABOUR RELATIONS ACT. THIS ASPECT OF THE COMPLAINT WAS ALSO DEALT WITH BY THE BOARD IN THE EARLIER DECISION REFERRED TO ABOVE AND IN A RECONSIDERATION OF THAT DECISION DATED NOVEMBER 18, 1971, [1971] OLRB REP. 730. IN THESE EARLIER DECISIONS THE BOARD MADE IT CLEAR THAT IT DID NOT HAVE JURISDICTION TO DEAL WITH DISCHARGES FROM EMPLOYMENT UNLESS THE DISCHARGE WAS CONTRARY TO SOME PROVISION OF THE LABOUR RELATIONS ACT. MORE SPECIFICALLY, IT WAS POINTED OUT THAT SECTION 79 IS A PROCEDURAL SECTION AND THAT BEFORE A COMPLAINANT IS ENTITLED TO RELIEF UNDER SECTION 79 IT MUST BE SHOWN THAT THE RESPONDENT ACTED CONTRARY TO SOME OTHER SECTION OF THE LABOUR RELATIONS ACT. IN THE PRESENT CASE MR. WOODS ALLEGES THAT HE HAS BEEN

DISCRIMINATED AGAINST AS TO MY EMPLOYMENT AND OPPORTUNITY FOR EMPLOYMENT, WHEN I HAD TWO DR'S REPORTS JUNE 8TH 1971 AND JUNE 9TH 1971 I SHOULD HAVE BEEN GIVEN THE CHANCE TO TRY AND SEE IF I COULD GO ON AND IF I COULD NOT TAKE IT THEN LET GO, THERE IS WORK THERE I CAN DO AND WHEN THEY DID NOT GIVE ME THAT CHANCE AFTER ALL MY 20 YEARS OR SO, I WOULD SAY THAT I HAD BEEN REFUSED EMPLOYMENT, THROUGH ALL CONTRARY TO SECTION 79(1)(A),

51A, AND THEY WERE EXPELLING ME AND PENALISING ME ON ACCOUNT OF MY HANDICAP AND TIME OFF UNDER DR'S CARE, AND IF THEY HAD LET ME GO BACK TO WORK I WOULD HAVE GONE I DID NOT GO AND GET THE DR'S REPORTS JUST FOR SOMETHING TO DO.

THE REAL REASON THEY DO NOT WANT TO LET ME GO BACK THEY HAVE FOUND OUT MORE ABOUT MY BACK, AND WHEN IT HAS NOT BEEN PUT THROUGH BY THE WORKMENS COMPENSATION, THEY SAY I AM TOO BIG OF A RISK, WHEN I AM NOT COVERED BY THE W.C.B., IT IS FROM MY EMPLOYMENT AND ALL THE DIFFERENT JOBS I HAVE DONE. UNFAIR TREATMENT AND WHEN MY GROUP IN'S RAN OUT MARCH 15TH, 1971, THEY SHOULD HAVE LET ME GO THEN, WHEN THEY MUST HAVE KNOWN THAT THEY WEREN'T GOING TO LET ME GO BACK. I COULD HAVE GOT MY UNEMPLOYMENT IN'S INSTEAD OF MAKING ME GO WITHOUT IT.

AND WAIT UNTIL SOME TIME AFTER I GOT THE DR'S REPORTS BEFORE DECIDING TO NOT LET ME GO BACK OR TRY TO MAKE A GO OF IT. SECTION 79(1)A AND SUB-SECTION (c) SECTION 51A AND COMPLAINT AGAINST LOCAL 4912 HAS BEEN SENT IN OF THESE TWO SECTIONS AND COMPANY.

5. AT THE HEARING OF THE PRESENT CASE IN KINGSTON IT WAS CAREFULLY EXPLAINED TO THE COMPLAINANT THAT THE COMPLAINT AND VOLUMINOUS MATERIAL FILED BY HIM DID NOT CONTAIN ANY INDICATION THAT HE HAD BEEN DISCHARGED OR REFUSED EMPLOYMENT BY THE RESPONDENT CONTRARY TO ANY SECTION OF THE ACT, APART FROM SECTION 79. MORE SPECIFICALLY, IT WAS MADE CLEAR TO HIM THAT THIS BOARD HAS NO JURISDICTION TO DEAL WITH A COMPLAINT THAT HE HAD BEEN DISCRIMINATED AGAINST BY THE RESPONDENT, UNLESS THE ALLEGED DISCRIMINATION WAS CONTRARY TO SOME SECTION OF THE ACT OTHER THAN SECTION 79. MR. WOODS CONCEDED THAT HE WAS NOT DEALT WITH BY THE RESPONDENT BECAUSE HE WAS A UNION MEMBER OR BECAUSE OF HIS UNION ACTIVITIES. IT WAS FURTHER POINTED OUT TO THE COMPLAINANT THAT HE COULD NOT IN THIS CASE RELY ON SECTION 51A (NOW SECTION 60) OF THE ACT BECAUSE THAT SECTION DEALT ONLY WITH THE DUTY OF A TRADE UNION TO REPRESENT FAIRLY EMPLOYEES IN A BARGAINING UNIT. MR. WOODS ADMITTED THAT HE WAS INDEED RELYING SOLELY ON THE WORD "DISCRIMINATION" AS IT APPEARS IN SECTION 79(1)(A).

6. IN SUM, AFTER CONSIDERING ALL THE MATERIALS BEFORE US AND HAVING HEARD THE COMPLAINANT'S ORAL REPRESENTATIONS, WE ARE UNABLE TO FIND ANYTHING WHICH REMOTELY SUGGESTS THAT MR. WOODS HAS BEEN DEALT WITH BY THE RESPONDENT CONTRARY TO SECTION 79(1)(A), SECTION 60, OR INDEED ANY OTHER SECTION OF THE LABOUR RELATIONS ACT.

7. THERE ARE TWO OTHER MATTERS WE WISH TO REFER TO, THOUGH WITHOUT COMMENT OR OBSERVATION. THE FIRST IS THAT IT WOULD APPEAR THAT THE RESPONDENT DID IN FACT OFFER TO EMPLOY MR. WOODS AS A NIGHT WATCHMAN. THE OFFER WAS DECLINED. THE SECOND IS THAT THE RESPONDENT FROM THE OUTSET WAS PREPARED TO OFFER MR. WOODS EVERY ASSISTANCE FOR RETRAINING AND LOCATING A JOB WHICH HIS PHYSICAL CONDITION WOULD PERMIT HIM TO ACCEPT. THIS OFFER WAS REPEATED AT THE HEARING IN KINGSTON.

8. IN THE RESULT AND HAVING REGARD TO ALL THE ABOVE CONSIDERATIONS, THIS COMPLAINT IS DISMISSED.

1817-72-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (APPLICANT) V. THE PRESTOLITE COMPANY, DIVISION OF ELTRA OF CANADA LIMITED (RESPONDENT) V. CANADIAN UNION OF OPERATING ENGINEERS (INTERVENER).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND E. BOYER.

DECISION OF THE BOARD: APRIL 17, 1972.

1. THE APPLICANT HAS REQUESTED THAT A PRE-HEARING REPRESENTATION VOTE BE TAKEN.

2. IT APPEARS TO THE BOARD ON AN EXAMINATION OF THE RECORDS OF THE APPLICANT AND THE RECORDS OF THE RESPONDENT THAT NOT LESS THAN THIRTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE VOTING CONSTITUENCY HEREINAFTER DESCRIBED WERE MEMBERS OF THE APPLICANT AT THE TIME THE APPLICATION WAS MADE.

3. THE BOARD DIRECTS THAT A PRE-HEARING REPRESENTATION VOTE BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN THE FOLLOWING VOTING CONSTITUENCY:

ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS EMPLOYED IN THE BOILER ROOM OF THE RESPONDENT AT ITS PLANT IN VAUGHAN TOWNSHIP, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, LABORATORY TECHNICIANS AND EMPLOYEES CURRENTLY REPRESENTED BY THE APPLICANT.

4. ALL EMPLOYEES OF THE RESPONDENT IN THE VOTING CONSTITUENCY ON THE 13TH DAY OF APRIL, 1972 WHO HAVE NOT VOLUNTARILY TERMINATED THEIR EMPLOYMENT OR WHO HAVE NOT BEEN DISCHARGED FOR CAUSE BETWEEN THE 13TH DAY OF APRIL, 1972 AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

5. VOTERS WILL BE GIVEN A CHOICE BETWEEN THE APPLICANT AND THE INTERVENER.

6. IT IS NOTED THAT THE INTERVENER HAS CHALLENGED THE STATUS OF THE APPLICANT TO REPRESENT EMPLOYEES IN A BARGAINING UNIT DESCRIBED IN THE TERMS OF THE VOTING CONSTITUENCY SINCE THE APPLICANT "DOES NOT COMMONLY BARGAIN SEPARATELY AND APART FROM OTHER EMPLOYEES, FOR EMPLOYEES WHO EXERCISE TECHNICAL SKILLS, AND WHO ARE MEMBERS OF A CRAFT." THE BOARD RECOGNIZES THAT THE APPLICANT IS NOT A TRADE UNION WHICH MAY REPRESENT A CRAFT BARGAINING UNIT OF STATIONARY ENGINEERS AND ACCORDINGLY IF THE APPLICANT IS SUCCESSFUL IN ITS APPLICATION TO DISPLACE THE INTERVENER AS BARGAINING AGENT FOR THE EMPLOYEES WITH WHOM WE ARE HERE CONCERNED, THE BARGAINING UNIT DETERMINED BY THE BOARD WILL NOT BE DESCRIBED IN TERMS OF A CRAFT UNIT BUT WILL BE DESCRIBED IN TERMS OF A "TAG-END" UNIT OF ALL EMPLOYEES OF THE RESPONDENT WITH THE EXCEPTIONS WHICH APPEAR IN THE VOTING CONSTITUENCY DESCRIBED ABOVE. WHILE THE APPLICANT CANNOT REPRESENT STATIONARY ENGINEERS IN A CRAFT BARGAINING UNIT, THERE IS NOTHING IN THE ACT WHICH WOULD PREVENT THE APPLICANT FROM REPRESENTING A UNIT OF EMPLOYEES WHICH INCLUDES STATIONARY ENGINEERS.

7. THE MATTER IS REFERRED TO THE REGISTRAR.

1374-71-R: INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796
(APPLICANT) V. MARBON DIVISION, BORG-WARNER (CANADA) LIMITED (RESPONDENT) V. EMPLOYEE (OBJECTOR).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND O. HODGES.

DECISION OF THE BOARD; APRIL 12, 1972.

1. FOLLOWING THE DECISION OF THE BOARD DATED JANUARY 12, 1972 IN THIS MATTER, THE APPLICANT REQUESTED THE BOARD TO CLARIFY ITS DECISION AND TO DETERMINE WHETHER D. G. HANMORE IS AN EMPLOYEE OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT FOR WHICH THE APPLICANT WAS CERTIFIED.

2. HAVING REGARD TO THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER DATED MARCH 29, 1972, THE BOARD FINDS THAT WHILE MR. HANMORE IS A QUALIFIED STATIONARY ENGINEER AND OCCASIONALLY WORKS AS A RELIEF ENGINEER IN THE BOILER ROOM OF THE RESPONDENT, HIS MAIN FUNCTION IS NOT THAT OF A STATIONARY ENGINEER EMPLOYED BY THE RESPONDENT IN THE BOILER ROOM. MR. HANMORE IS A MAINTENANCE ENGINEER WHOSE PRIMARY FUNCTIONS ARE CONCERNED WITH THE TESTING OF EFFLUENT FROM THE RESPONDENT'S PLANT AND THE REGULATION OF THE EQUIPMENT INVOLVED IN CLARIFYING THE EFFLUENT. THE BOARD THEREFORE FINDS THAT AT THE RELEVANT

TIMES MR. HANMORE WAS NOT A STATIONARY ENGINEER EMPLOYED BY THE RESPONDENT IN THE BOILER ROOM OF ITS PLANT AT HAMILTON. FOR THE PURPOSES OF CLARITY, THE BOARD THEREFORE FINDS THAT MR. HANMORE WAS NOT AN EMPLOYEE OF THE RESPONDENT IN THE BARGAINING UNIT AT THE TIME THE APPLICATION WAS MADE.

3. MR. HANMORE BY LETTER DATED APRIL 9, 1972 HAS REQUESTED A HEARING IN THIS MATTER FOR THE PURPOSE OF CALLING WITNESSES CONCERNING EVIDENCE CONTAINED IN THE EXAMINER'S REPORT.

4. APART FROM THE FACT THAT MR. HANMORE IS NOT A PARTY TO THESE PROCEEDINGS AND THE FACT THAT THE PARTIES THEMSELVES HAVE NOT REQUESTED A FURTHER HEARING IN THIS CASE, IT IS NOTED THAT MR. HANMORE TESTIFIED AT THE EXAMINER'S HEARING AND WAS PRESENT THROUGHOUT TOGETHER WITH THE APPLICANT'S REPRESENTATIVE AND THAT "THE PARTIES WERE AFFORDED FULL OPPORTUNITY TO BE HEARD, TO EXAMINE AND CROSS-EXAMINE WITNESSES AND TO INTRODUCE EVIDENCE BEARING ON THE ISSUES..." IN THESE CIRCUMSTANCES, THE BOARD IS OF THE VIEW THAT NO FURTHER OPPORTUNITY SHOULD BE AFFORDED TO CALL ADDITIONAL EVIDENCE IN THIS MATTER AND MR. HANMORE'S REQUEST IS THEREFORE DENIED.

1754-71-R: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) (APPLICANT) v. LLOYDAIRE (1969) LIMITED (RESPONDENT).

BEFORE: FRANK V. BOSCARIOL, VICE-CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND P. J. O'KEEFFE.

APPEARANCES AT THE HEARING: R. RUSSELL AND G. STEVENS FOR THE APPLICANT; J. HEATHER AND M. BOYLE FOR THE RESPONDENT.

DECISION OF THE BOARD: APRIL 14, 1972.

1. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(N) OF THE LABOUR RELATIONS ACT.

2. AT THE HEARING OF THIS MATTER ON APRIL 13, 1971, COUNSEL FOR THE RESPONDENT REQUESTED THAT THE DESCRIPTION OF THE BARGAINING UNIT BE RESTRICTED TO A MUNICIPAL ADDRESS IN TORONTO AND IN SUPPORT OF THIS SUBMISSION REFERRED TO THE TERMINAL BEEF COMPANY CASE, (BOARD FILE NO. 1069-71-R).

3. HOWEVER, AS HAS BEEN STATED IN THE GREAT ATLANTIC AND PACIFIC TEA COMPANY, LIMITED CASE OLRB M.R. JANUARY 1969, P. 1017 AT PAGE 1018;

"THE USUAL PRACTICE OF THE BOARD WHERE
THERE IS ONLY ONE LOCATION IN METROPOLITAN

TORONTO WHERE EMPLOYEES ARE EMPLOYED ON THE DATE THE APPLICATION WAS MADE IS TO CERTIFY THE APPLICANT FOR ALL EMPLOYEES AT METROPOLITAN TORONTO."

IN THIS REGARD, SEE ALSO THE ANTHES EQUIPMENT LIMITED CASE (BOARD FILE NO. 1045-71-R).

4. WE THEREFORE FIND THAT THE DECISION IN THE TERMINAL BEEF COMPANY CASE (SUPRA) WHICH RESTRICTED THE BARGAINING UNIT TO A MUNICIPAL ADDRESS IN TORONTO, ON AGREEMENT OF THE PARTIES, DOES NOT CHANGE THE POLICY OF THE BOARD IN THIS REGARD.

5. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN AND FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN AND FORELADY, OFFICE AND SALES STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE AGREEMENT.

6. FOR THE PURPOSE OF CLARITY, THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT GUIDO MIGNONE IS NOT INCLUDED IN THE SAID BARGAINING UNIT.

7. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN SIXTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON MARCH 30, 1972, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 92(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

8. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

1250-71-U: INTERNATIONAL WOODWORKERS OF AMERICA (COMPLAINANT) V. EMPIRE BENTWOOD INDUSTRIES LIMITED (RESPONDENT).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS P. J. O KEEFFE AND J. E. C. ROBINSON, Q.C.

APPEARANCES AT THE HEARING: J. SACK, J. C. HORAN AND A. MESSIER FOR THE COMPLAINANT; NO ONE APPEARING FOR THE RESPONDENT.

DECISION OF VICE-CHAIRMAN RORY F. EGAN AND BOARD MEMBER J. E. C. ROBINSON, Q.C.:
APRIL 17, 1972.

1. THE NAME "EMPIRE BENTWOOD INDUSTRIES LTD." APPEARING IN THE STYLE OF CAUSE OF THIS APPLICATION AS THE NAME OF THE RESPONDENT IS AMENDED TO READ: "EMPIRE BENTWOOD INDUSTRIES LIMITED".

2. THIS IS A COMPLAINT UNDER SECTION 79 OF THE LABOUR RELATIONS ACT IN WHICH THE COMPLAINANT ALLEGES THAT GILBERT LAROCQUE, LORNE GUNDERSON, ANDRE MYRE AND ALBERT LAROCQUE HAVE BEEN DEALT WITH BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF SECTIONS 56, 58(A), 61 AND 70(2) OF THE ACT. THE COMPLAINANT REQUESTS THAT THE ABOVE AGGRIEVED PERSONS BE REINSTATED TO EMPLOYMENT WITH COMPENSATION FOR MONIES LOST.

3. AT THE COMMENCEMENT OF THE HEARING, THE COMPLAINANT ADVISED THE BOARD THAT IT WAS PROCEEDING WITH THE COMPLAINT ONLY WITH RESPECT TO GILBERT LAROCQUE.

4. THE BOARD WAS ADVISED BY SOLICITORS FOR THE RESPONDENT THAT THE RESPONDENT WAS IN RECEIVERSHIP AND THAT NEITHER THE RESPONDENT NOR ITS RECEIVERS WOULD APPEAR BEFORE THE BOARD.

5. ANDRE MESSIER, AN ORGANIZER FOR THE COMPLAINANT, STATED THAT A CAMPAIGN TO ORGANIZE EMPLOYEES OF THE RESPONDENT WAS COMMENCED AT THE END OF OCTOBER 1971. HE TESTIFIED THAT GILBERT LAROCQUE FIRST MADE CONTACT WITH THE U.A.W. WITH A VIEW TO ORGANIZING THE EMPLOYEES AND THEN GOT IN TOUCH WITH THE COMPLAINANT. A MEETING OF EMPLOYEES WAS HELD ON OCTOBER 28, 1971 AT A HOTEL IN GRENVILLE, QUEBEC. LAROCQUE SAT WITH THE UNION OFFICIALS AT THE FRONT OF THE HALL DURING THIS MEETING AND LATER GOT ONE EMPLOYEE TO SIGN A CARD. ON THE DAY FOLLOWING THE MEETING, LAROCQUE HAD TWO OR THREE MORE CARDS SIGNED. LAROCQUE CORROBORATED THE FOREGOING.

6. LAROCQUE TESTIFIED THAT ON MONDAY, NOVEMBER 1, 1971, SOME KIND OF MEETING WAS HELD IN THE CAFETERIA AT WHICH A PIECE OF PAPER WAS GIVEN OUT FOR EMPLOYEES TO SIGN TO INDICATE WHETHER THE EMPLOYEES WANTED THE UNION OR NOT.

7. THE SLIPS OF PAPER WERE PASSED OUT BY THREE EMPLOYEES, DUBOIS, PROULX AND FAUTEUX, WHO COMPRISED A PLANT COMMITTEE. THE PAPERS WERE TO BE RETURNED THE FOLLOWING MORNING.

8. THE SLIPS WERE PLACED IN, WHAT THE WITNESS CALLED, A SECRET BOX. THE BOX WAS IN PROULX'S KEEPING. IT WAS TO HAVE BEEN OPENED AT THE COFFEE BREAK THE FOLLOWING DAY, THAT IS TUESDAY. THE WITNESS SAID THAT IT WAS, HOWEVER, OPENED BY THE PLANT COMMITTEE IN THE FOREMAN'S ROOM BEFORE THE COFFEE BREAK.

9. LAROCQUE SAID THAT ON THAT TUESDAY THE EMPLOYEES WERE CALLED INTO THE OFFICE, ONE BY ONE DURING WORKING HOURS AND ASKED TO SIGN A

PETITION AGAINST THE UNION. THIS MATTER WAS RUN BY FAUTEUX. HE ASKED THE WITNESS IF HE WOULD SIGN. THE LATTER REFUSED TO SIGN AND LEFT THE ROOM. THE WITNESS SAID THAT ONE OF THE MANAGEMENT ATTEMPTED TO PASS THROUGH THE OFFICE DURING THIS TIME AND THAT HE APOLOGIZED FOR THE INTRUSION. LAROCQUE SAID THAT FAUTEUX GOT EXTRA TIME FROM SOME ONE TO COMPLETE THE INTERVIEWS.

10. ON WEDNESDAY, NOVEMBER 3, 1971, A MEETING OF EMPLOYEES WAS HELD IN THE CAFETERIA DURING THE COFFEE BREAK. PAUL PROULX, ONE OF THE SHOP COMMITTEE MEMBERS, ANNOUNCED THAT EIGHT EMPLOYEES WERE TO BE LAID OFF. HE READ OUT THE NAMES WHICH INCLUDED LAROCQUE'S. THE WITNESS SAID THAT PROULX EXPLAINED THAT THE LAYOFF WAS TEMPORARY AND WAS BECAUSE OF SHORTAGE OF MONEY AND THE ABSENCE OF CONTRACTS. ONE EMPLOYEE WITH LESS SENIORITY THAN LAROCQUE WAS RETAINED IN EMPLOYMENT.

11. AT ABOUT 4.25 THAT AFTERNOON, THE FOREMAN HANDED OUT THE PAY CHEQUES. HE TOLD LAROCQUE AND OTHERS THAT THE LAYOFF WOULD NOT BE TOO LONG AND THAT THE EMPLOYEES CONCERNED WOULD BE CALLED BACK AS SOON AS THERE WAS WORK.

12. LAROCQUE SAID THAT HE WENT TO THE PLANT SOME TIME LATER AND WAS TOLD THAT OTHER EMPLOYEES HAD BEEN RECALLED AND TWO NEW EMPLOYEES HAD BEEN HIRED.

13. LAROCQUE TESTIFIED THAT AT THE MEETING ON WEDNESDAY, NOVEMBER 3, 1971, PROULX SAID THAT THE EMPLOYEES SHOULD NOT HAVE JOINED THE UNION AND THAT THE COMPANY WOULD PAY A LAWYER IF THEY WOULD JOIN AN ASSOCIATION INSTEAD OF A UNION - THAT IF THE UNION CAME IN, THE COMPANY WOULD CLOSE THE PLANT.

14. AS ALREADY INDICATED, NEITHER THE RESPONDENT NOR ITS RECEIVERS APPEARED AT THE HEARING SO THAT THERE WAS, OF COURSE, NO EVIDENCE FROM THAT QUARTER. THE MATTER THUS FALLS TO BE DETERMINED ON THE COMPLAINANT'S EVIDENCE ALONE.

15. IN THE FORMAL COMPLAINT, IT IS ALLEGED THAT DUBOIS, PROULX AND FAUTEUX WERE DESIGNATED BY THE EMPLOYER TO ACT AS A PLANT COMMITTEE. THE EVIDENCE OF LAROCQUE, HOWEVER, IS THAT THESE THREE PERSONS HAD BEEN ELECTED BY THE EMPLOYEES AS A PLANT COMMITTEE. HE TESTIFIED THAT THE COMMITTEE HAD BEEN IN EXISTENCE PRIOR TO THE TIME HE COMMENCED TO WORK FOR THE COMPANY AND THAT HE HAD HIMSELF PARTICIPATED IN THE ELECTION OF FAUTEUX. IN THE CIRCUMSTANCES, IT DOES NOT APPEAR UNUSUAL THAT THE COMMITTEE REPRESENTING THE EMPLOYEES SHOULD BE NOTIFIED ABOUT THE IMPENDING LAYOFF AND SHOULD PASS THE WORD TO THE EMPLOYEES. THERE IS, OF COURSE, NO DISPUTE CONCERNING THE FACT THAT EIGHT EMPLOYEES WERE LAID OFF BY THE COMPANY ON NOVEMBER 3, 1971.

16. IT IS BEYOND DOUBT THAT THE MEMBERS OF THE PLANT COMMITTEE ATTEMPTED TO FRUSTRATE THE EFFORTS OF THE UNION TO ORGANIZE THE EMPLOYEES THROUGH THE VOTE THE COMMITTEE CONDUCTED AND THROUGH THE PETITION WHICH IT SOUGHT TO HAVE THE EMPLOYEES SIGN IN OPPOSITION TO THE UNION. THE EVIDENCE OF THE USE OF THE FOREMAN'S OFFICE AND OF THE STATEMENTS ATTRIBUTED TO PROULX, MAY BE RELEVANT TO THE QUESTION OF THE WEIGHT TO BE AFFORDED THE PETITION IN OTHER PROCEEDINGS, IT IS DIFFICULT TO SEE, HOWEVER, OF WHAT PROBATIVE VALUE IT IS IN THE PRESENT COMPLAINT.

17. THE EVIDENCE, AS NOTED, ESTABLISHES THAT PROULX WAS AN EMPLOYEE AND AN ELECTED MEMBER OF THE PLANT COMMITTEE. IT FOLLOWS THEN THAT EVEN IF THE EVIDENCE OF LAROCQUE WITH RESPECT TO THE STATEMENTS HE ATTRIBUTED TO PROULX AT THE MEETING OF NOVEMBER 3, 1971 WERE ADMISSIBLE, IT CANNOT BE BROUGHT HOME TO THE MANAGEMENT OF THE COMPANY ON THE FACTS BEFORE US. IF, ON THE OTHER HAND, THE EVIDENCE WAS OFFERED TO ESTABLISH THAT THE STATEMENTS WERE MADE BY THE COMPANY TO PROULX AND RELAYED BY HIM TO THE MEETING, IT IS ALSO INADMISSIBLE AS HEARSAY IN THE ABSENCE OF EXEMPTION FROM THE HEARSAY RULE. IN ANY EVENT, THE EVIDENCE IS OF DOUBTFUL RELEVANCE TO THE ISSUE BEFORE THE BOARD.

18. IT MIGHT NOT BE INAPPROPRIATE TO POINT OUT AT THIS TIME THAT THE ELECTION OF A RESPONDENT NOT TO APPEAR OR, HAVING APPEARED, NOT TO CALL EVIDENCE, IS NOT IN ITSELF AN EVIDENTARY MATTER TO BE CONSIDERED BY THE BOARD IN ITS ATTEMPT TO DETERMINE ISSUES SUCH AS THOSE RAISED IN THE PRESENT INSTANCE. SUCH ELECTION IN NO WAY LIGHTENS THE INITIAL ONUS RESTING UPON THE COMPLAINANT TO MAKE OUT A CASE NECESSATING AN ANSWER BY THE RESPONDENT IN THE ABSENCE OF WHICH THE RESPONDENT MAY BE FOUND TO BE AT FAULT. THAT IS, THERE MUST STILL BE A PRIMA FACIE CASE MADE OUT.

19. WE FIND THAT THE EVIDENCE HERE RELATES, IN THE MAIN, TO THE ACTIVITIES OF THE PLANT COMMITTEE AND ITS OPPOSITION TO THE UNION RATHER THAN TO ANY ACTION ON THE PART OF MANAGEMENT WITH RESPECT TO LAROCQUE OTHER THAN, OF COURSE, HIS TERMINATION BY THE UNION, TOGETHER WITH EIGHT OTHER EMPLOYEES. THERE IS NO EVIDENCE AS TO WHETHER THE OTHER LAID OFF EMPLOYEES HAD OR HAD NOT REFUSED TO SIGN THE PETITION. INCIDENTALLY, THE LAYOFF IN VIEW OF THE RECEIVERSHIP WOULD NOT APPEAR TO BE AN UNEXPECTED OCCURRENCE.

20. WE FIND THAT THERE IS NO EVIDENCE FROM WHICH THE BOARD CAN BE SATISFIED BY REASONABLE INFERENCES OR DIRECTLY THAT THE RESPONDENT DEALT WITH LAROCQUE CONTRARY TO THE PROVISIONS OF THE LABOUR RELATIONS ACT.

21. THE COMPLAINT IS THEREFORE DISMISSED.

DECISION OF BOARD MEMBER P. J. O'KEEFE: APRIL 17, 1972.

HAVING REGARD TO THE UNCONTESTED EVIDENCE IN THIS CASE AND THE ONUS PRINCIPLE ENUNCIATED IN THE NATIONAL AUTOMATIC VENDING CO. LTD. CASE, 63 CLLR ¶16,278 (OLRB), I WOULD FIND THAT GILBERT LAROCQUE WAS DEALT WITH BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF THE LABOUR RELATIONS ACT. I WOULD ORDER HIS REINSTATEMENT WITH FULL COMPENSATION.

1697-71-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (APPLICANT) V. NORTHERN ELECTRIC COMPANY LIMITED (RESPONDENT) V. CANADIAN UNION OF COMMUNICATION WORKERS (INTERVENER #1) V. UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) (INTERVENER #2).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS H. ADE AND O. HODGES.

DECISION OF THE BOARD: APRIL 18, 1972.

1. ON THE TAKING OF THE PRE-HEARING REPRESENTATION VOTE IN THIS MATTER 122 PERSONS IN THE VOTING CONSTITUENCY CAST BALLOTS. OF THE BALLOTS CAST 48 WERE MARKED IN FAVOUR OF THE APPLICANT, 30 WERE MARKED IN FAVOUR OF INTERVENER #2, 27 WERE MARKED "NO TRADE UNION" AND 17 WERE MARKED IN FAVOUR OF INTERVENER #1.
2. THE RESPONDENT BY LETTER DATED APRIL 14, 1972, FOR THE REASONS THEREIN SET OUT, HAS REQUESTED THAT THE BOARD DISMISS THIS APPLICATION SINCE NEITHER THE APPLICANT NOR INTERVENER #1 NOR INTERVENER #2 RECEIVED MORE THAN FIFTY PER CENT OF THE BALLOTS CAST.
3. WITHOUT PREJUDICE TO THE RESPONDENT'S POSITION, THE BOARD PURSUANT TO THE PROVISIONS OF SECTION 92(5) DIRECTS THAT AN ADDITIONAL REPRESENTATION VOTE BE CONDUCTED IN THIS MATTER IN THE VOTING CONSTITUENCY DESCRIBED IN THE BOARD'S DECISION OF MARCH 24, 1972.
4. SINCE THE CHOICE OF INTERVENER #1 RECEIVED THE FEWEST NUMBER OF VOTES IN THE PRE-HEARING REPRESENTATION VOTE TAKEN IN THIS MATTER, REFERENCE TO INTERVENER #1 WILL BE DELETED FROM THE BALLOT IN THE RUN-OFF VOTE TO BE TAKEN IN THIS MATTER.
5. ALL EMPLOYEES OF THE RESPONDENT IN THE VOTING CONSTITUENCY ON THE DATE HEREOF WHO HAVE NOT VOLUNTARILY TERMINATED THEIR EMPLOYMENT OR WHO HAVE NOT BEEN DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

6. VOTERS WILL BE GIVEN A CHOICE BETWEEN INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW), OR UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE), OR NO TRADE UNION.

7. THE BOARD DIRECTS THAT THE BALLOT BOX CONTAINING ALL THE BALLOTS CAST IN THE REPRESENTATION VOTE BE SEALED PENDING THE FURTHER DIRECTION OF THE BOARD.

8. FOLLOWING THE TAKING OF THE REPRESENTATION VOTE THE BOARD DIRECTS THE REGISTRAR TO LIST THIS MATTER FOR HEARING TO INQUIRE INTO THE ISSUES RAISED BY THE RESPONDENT IN ITS LETTER OF APRIL 14, 1972.

9. THE MATTER IS REFERRED TO THE REGISTRAR.

566-71-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) v. SIVI CONSTRUCTION LIMITED (RESPONDENT) v. OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, LOCAL UNION 172 (INTERVENER).

BEFORE: R. A. FURNESS, VICE-CHAIRMAN AND BOARD MEMBERS F. W. MURRAY AND P. J. O'KEEFFE.

APPEARANCES AT THE HEARING: A. M. MINSKY, B. YANDELL AND TONY SPADA FOR THE APPLICANT; R. D. PERKINS FOR THE RESPONDENT; W. PUNNETT FOR OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, LOCAL UNION 172 AND FOR A GROUP OF EMPLOYEES.

DECISION OF THE BOARD: APRIL 18, 1972.

1. IN THIS APPLICATION COUNSEL FOR THE RESPONDENT AND COUNSEL FOR THE OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, LOCAL UNION 172 (HEREINAFTER REFERRED TO AS "LOCAL 172") AND FOR A GROUP OF EMPLOYEES RAISED MOTIONS IDENTICAL TO THOSE REFERRED TO IN A DECISION OF THE BOARD IN SUNRISE PAVING & CONSTRUCTION Co. LTD., BOARD FILE #564-71-R (DECISION DATED APRIL 12, 1972). FOR THE REASONS GIVEN IN SUNRISE (SUPRA), THESE MOTIONS ARE DENIED.

2. IN THE INSTANT APPLICATION, COUNSEL FOR LOCAL 172 AND FOR A GROUP OF EMPLOYEES AND COUNSEL FOR THE RESPONDENT MADE ADDITIONAL MOTIONS BEFORE THE BOARD.

3. COUNSEL FOR LOCAL 172 AND FOR A GROUP OF EMPLOYEES MADE TWO

ADDITIONAL MOTIONS BEFORE THE BOARD. FIRSTLY, THAT HE BE ALLOWED TO ADDUCE EVIDENCE THAT CERTAIN EMPLOYEES (THE BOARD WAS NOT INFORMED BY WHOM THESE EMPLOYEES WERE EMPLOYED OR WHEN THEY COMMENCED THEIR EMPLOYMENT) DID NOT WANT TO BE REPRESENTED BY THE APPLICANT AND WERE IN FACT STILL MEMBERS OF LOCAL 172. SECONDLY, THAT HE BE ALLOWED TO INTRODUCE CERTAIN MATERIAL BEFORE THE SUPREME COURT OF ONTARIO INVOLVING LOCAL 172 (THE APPLICANT AND THE RESPONDENT WERE APPARENTLY NOT PARTIES TO THIS PROCEEDING BEFORE THE SUPREME COURT OF ONTARIO).

4. COUNSEL FOR THE RESPONDENT MADE AN ADDITIONAL MOTION BEFORE THE BOARD THAT THE EMPLOYEES (THE BOARD WAS NOT INFORMED BY WHOM THESE EMPLOYEES WERE EMPLOYED OR WHEN THEY COMMENCED THEIR EMPLOYMENT) BE GIVEN NOTICE OF THIS APPLICATION SO THAT THEY COULD MAKE REPRESENTATIONS BEFORE THE BOARD AND MAKE "CHARGES". COUNSEL FOR THE RESPONDENT DREW AN ANALOGY AND COMPARED THE POSITION OF LOCAL 172 AND THE EMPLOYEES AS THAT OF AGENT AND PRINCIPAL. HE ARGUED THAT WHERE THE AGENT HAS BEEN DISQUALIFIED THE PRINCIPAL SHOULD HAVE NOTICE THEREOF SO THAT IT MAY MAKE REPRESENTATIONS TO THE BOARD. COUNSEL FOR THE RESPONDENT ENVISAGED LOCAL 172 IN THE ROLE OF AGENT AND THE EMPLOYEES IN THE ROLE OF PRINCIPAL.

5. WITH REGARD TO THE ADDITIONAL MOTIONS REFERRED TO IN PARAGRAPH THREE HEREIN, THE BOARD NOTES ITS DECISION DATED MARCH 9, 1972, IN THIS MATTER, WHEREIN THE BOARD DETERMINED THAT LOCAL 172 DID NOT HAVE STATUS TO INTERVENE IN THIS PROCEEDING. SINCE LOCAL 172 HAS NO STATUS TO INTERVENE IN THIS PROCEEDING, IT HAS NO STATUS TO RAISE THE ADDITIONAL MOTIONS REFERRED TO IN PARAGRAPH THREE HEREIN. WITH RESPECT TO A GROUP OF EMPLOYEES (EVEN ASSUMING, WITHOUT DECIDING, THAT THEY WERE EMPLOYEES OF THE RESPONDENT AT THE RELEVANT TIME) ALLEGEDLY NOT DESIRING THE APPLICANT TO REPRESENT THEM, THE BOARD NOTES THAT EMPLOYEES OF THE RESPONDENT HAD AN OPPORTUNITY TO INDICATE THEIR OPPOSITION TO THE SELECTION OF THE APPLICANT AS THEIR BARGAINING AGENT SOME TEN MONTHS AGO AND THAT THEY DID NOT EXERCISE THIS OPPORTUNITY AT THAT TIME. THE TIME FOR EXERCISING THIS OPPORTUNITY HAS NOW PASSED. REFERENCE IS MADE TO SECTION 48 OF THE BOARD'S RULES OF PROCEDURE.

6. WITH REGARD TO THE SECOND MOTION REFERRED TO IN PARAGRAPH THREE, WHE BOARD REITERATES THAT LOCAL 172 HAS NO STATUS IN THIS PROCEEDING BEFORE THE BOARD TO INTRODUCE THE MATERIAL REFERRED TO IN PARAGRAPH THREE CONCERNING THE ALLEGED PROCEEDING BEFORE THE SUPREME COURT OF ONTARIO. IN ADDITION, THE GROUP OF EMPLOYEES ARE NOT A PARTY TO THIS PROCEEDING BEFORE THE BOARD. IN ANY EVENT, THE BOARD NOTES THAT THE MATERIAL CONCERNING THE ALLEGED PROCEEDINGS BEFORE THE SUPREME COURT OF ONTARIO INVOLVING LOCAL 172, WAS FOR A DIFFERENT PURPOSE AND WITH DIFFERENT PARTIES AND WAS NOT RAISED BEFORE THE BOARD BY WAY OF ALLEGATIONS OF IMPROPER OR IRREGULAR CONDUCT AGAINST THE APPLICANT. THIS SECOND MOTION IS ACCORDINGLY DENIED.

7. TURNING NOW TO THE ADDITIONAL MOTION OF COUNSEL FOR THE RESPONDENT, THE BOARD NOTES (EVEN ASSUMING, WITHOUT DECIDING, THAT THE EMPLOYEES HE REFERRED TO WERE EMPLOYEES OF THE RESPONDENT AT THE RELEVANT TIME) IT HAS NOT BEEN ALLEGED THAT THE EMPLOYEES OF THE RESPONDENT WERE NOT GIVEN NOTICE OF THIS CERTIFICATION PROCEEDING. AS NOTED ABOVE, EMPLOYEES OF THE RESPONDENT DID NOT SIGNIFY TO THE BOARD THAT THEY DESIRED TO OPPOSE THIS APPLICATION FOR CERTIFICATION LET ALONE DESIRE TO FILE ALLEGATIONS OF IMPROPER OR IRREGULAR CONDUCT AGAINST THE APPLICANT. WITH RESPECT TO THE ANALOGY DRAWN FROM THE LAW OF AGENCY BY COUNSEL FOR THE RESPONDENT, THERE IS NO EVIDENCE BEFORE THE BOARD THAT THE EMPLOYEES OF THE RESPONDENT AFFECTED BY THIS APPLICATION AUTHORIZED LOCAL 172 TO REPRESENT THEM OR THAT AN AGENCY RELATIONSHIP AROSE BETWEEN EMPLOYEES OF THE RESPONDENT AFFECTED BY THIS APPLICATION AND LOCAL 172. THE ADDITIONAL MOTION OF COUNSEL FOR THE RESPONDENT IS DENIED.

8. THE REGISTRAR IS DIRECTED TO LIST THIS MATTER FOR CONTINUATION OF HEARING ON ALL OUTSTANDING ISSUES.

1425-71-M: CATHERINE GRACE HORNEMAN (MISS) (APPLICANT) V. SERVICE EMPLOYEES' UNION, LOCAL 210 (RESPONDENT TRADE UNION) V. PUBLIC GENERAL HOSPITAL SOCIETY OF CHATHAM (RESPONDENT EMPLOYER).

BEFORE: O.B. SHIME, VICE-CHAIRMAN, AND BOARD MEMBERS P.J. O'KEEFFE AND J.E.C. ROBINSON, Q.C.

APPEARANCES AT THE HEARING: W.I.C. BINNIE FOR THE APPLICANT; TED WOHL AND LEO PARE FOR THE RESPONDENT TRADE UNION; NO ONE APPEARING FOR THE RESPONDENT EMPLOYER.

DECISION OF THE BOARD: APRIL 19, 1972.

1. THE NAME 'SERVICE EMPLOYEES' UNION, LOCAL 210, WINDSOR, ONTARIO' APPEARING IN THE STYLE OF CAUSE OF THIS APPLICATION AS THE NAME OF THE RESPONDENT IS AMENDED TO READ: 'SERVICE EMPLOYEES' UNION, LOCAL 210'.

2. THIS IS AN APPLICATION UNDER SECTION 39(1) OF THE LABOUR RELATIONS ACT WHEREIN THE APPLICANT BECAUSE OF HER RELIGIOUS CONVICTION OR BELIEF OBJECTS TO JOINING A TRADE UNION OR TO THE PAYING OF DUES OR OTHER ASSESSMENTS TO THE TRADE UNION. THE UNCONTRADICTED EVIDENCE IS THAT THE APPLICANT HAD BEEN EMPLOYED AT PUBLIC GENERAL HOSPITAL SOCIETY OF CHATHAM, BUT THAT SHE HAD TERMINATED HER EMPLOYMENT IN JUNE OF 1971. SUBSEQUENTLY SHE RETURNED TO WORK AT THE HOSPITAL AS A 'NEW EMPLOYEE'. SHE FILED THIS APPLICATION IN DECEMBER OF 1971. THIS APPLICATION IS UNUSUAL BECAUSE THE APPLICANT APPEARS TO FALL WITHIN THE PROVISIONS OF

SECTION 39 OF THE LABOUR RELATIONS ACT ALLOWING HER TO CLAIM EXEMPTION WHILE AT THE SAME TIME FALLING WITHIN CERTAIN OTHER PORTIONS OF SECTION 39 WHICH WOULD PRECLUDE HER FROM MAKING AN APPLICATION. THE RELEVANT PROVISIONS OF SECTION 39 ARE AS FOLLOWS:

39.-(1) WHERE THE BOARD IS SATISFIED THAT AN EMPLOYEE BECAUSE OF HIS RELIGIOUS CONVICTION OR BELIEF,

- (A) OBJECTS TO JOINING A TRADE UNION; OR
- (B) OBJECTS TO THE PAYING OF DUES OR OTHER ASSESSMENTS TO A TRADE UNION,

THE BOARD MAY ORDER THAT THE PROVISIONS OF A COLLECTIVE AGREEMENT OF THE TYPE MENTIONED IN CLAUSE A OF SUBSECTION 1 OF SECTION 39 DO NOT APPLY TO SUCH EMPLOYEE AND THAT THE EMPLOYEE IS NOT REQUIRED TO JOIN THE TRADE UNION, TO BE OR CONTINUE TO BE A MEMBER OF THE TRADE UNION, OR TO PAY ANY DUES, FEES OR ASSESSMENTS TO THE TRADE UNION, PROVIDED THAT AMOUNTS EQUAL TO ANY INITIATION FEES, DUES OR OTHER ASSESSMENTS ARE PAID BY THE EMPLOYEE TO OR ARE REMITTED BY THE EMPLOYER TO A CHARITABLE ORGANIZATION MUTUALLY AGREED UPON BY THE EMPLOYEE AND THE TRADE UNION, BUT IF THE EMPLOYEE AND THE TRADE UNION FAIL TO SO AGREE THEN TO SUCH CHARITABLE ORGANIZATION REGISTERED AS A CHARITABLE ORGANIZATION IN CANADA UNDER PART I OF THE INCOME TAX ACT (CANADA) AS MAY BE DESIGNATED BY THE BOARD.

(2) SUBSECTION 1 APPLIES,

- (B) WHERE A COLLECTIVE AGREEMENT IN FORCE BEFORE THE 15TH DAY OF FEBRUARY, 1971 CONTAINS THE PROVISION MENTIONED IN SUBSECTION 1, TO EMPLOYEES IN THE EMPLOY OF THE EMPLOYER ON THE 15TH DAY OF FEBRUARY 1971 AND ONLY DURING THE LIFE OF SUCH COLLECTIVE AGREEMENT,

AND DOES NOT APPLY TO EMPLOYEES WHOSE EMPLOYMENT COMMENCES AFTER THE ENTERING INTO OF THE COLLECTIVE AGREEMENT WHEN CLAUSE A APPLIES, ON OR AFTER THE 15TH DAY OF FEBRUARY 1971, WHEN CLAUSE B APPLIES.

3. THE FACTS OF THIS CASE INDICATE THAT THE APPLICANT WAS AN EMPLOYEE IN THE EMPLOY OF THE EMPLOYER ON FEBRUARY 15, 1971, PURSUANT TO THE TERMS OF SECTION 39(2)(B) OF THE ACT WHICH WOULD ALLOW HER TO CLAIM EXEMPTION. HOWEVER, SINCE SHE TERMINATED HER EMPLOYMENT AND THEN COMMENCED HER EMPLOYMENT AGAIN AS A NEW EMPLOYEE IT APPEARS THAT SHE ALSO FALLS WITHIN THAT PORTION OF SECTION 39(2)(B) WHICH "DOES NOT APPLY TO EMPLOYEES WHOSE EMPLOYMENT COMMENCES... ON OR AFTER THE 15TH DAY OF FEBRUARY 1971...". ACCORDINGLY IT WOULD APPEAR THAT ON THE ONE HAND SHE IS ENTITLED TO CLAIM EXEMPTION WHILE ON THE OTHER HAND SHE IS PREVENTED FROM CLAIMING EXEMPTION.

4. IN RESOLVING THE APPARENT CONTRADICTION WE ARE OF THE OPINION THAT THE APPLICANT IS PREVENTED FROM CLAIMING EXEMPTION. SHE HAD THE OPPORTUNITY DURING HER FIRST EMPLOYMENT TO CLAIM EXEMPTION UNDER SECTION 39(2)(B) AND SHE DID NOT SO CLAIM. HER PRESENT APPLICATION IS MADE USING AS THE VEHICLE FOR HER CLAIM THE PRESENT EMPLOYMENT PERIOD WHICH COMMENCED IN JULY OF 1971. SINCE THE SECOND EMPLOYMENT PERIOD IS THE BASIS FOR HER CLAIM AND IS THE RELEVANT EMPLOYMENT PERIOD FOR THE PURPOSE OF THIS APPLICATION, WE ARE OF THE OPINION THAT SECTION 39(2)(B) DOES NOT APPLY TO THE APPLICANT SINCE SHE COMMENCED HER EMPLOYMENT AFTER FEBRUARY 15, 1971. ACCORDINGLY, THE APPLICATION IS DISMISSED.

1546-71-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA,
LOCAL 2486 (APPLICANT) v. DESOURDY CONSTRUCTION LIMITED (RESPONDENT)
 v. EMPLOYEE (OBJECTOR).

BEFORE: R. A. FURNESS, VICE-CHAIRMAN AND BOARD MEMBERS E. BOYER AND F. W. MURRAY.

APPEARANCES AT THE HEARING: P. E. GUERTIN AND DAVID THERIAULT FOR THE APPLICANT; NO ONE APPEARING FOR THE RESPONDENT; MAURICE ROY FOR THE OBJECTOR.

DECISION OF THE BOARD: APRIL 19, 1972.

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5. THE BOARD LISTED THIS MATTER FOR HEARING FOR THE PURPOSE OF INQUIRING INTO WHETHER MAURICE ROY PAID \$1.00 ON HIS OWN BEHALF AS STATED ON AN APPLICATION FOR MEMBERSHIP FILED IN HIS NAME BY THE APPLICANT AND ON THE STATEMENT OF DESIRE FILED IN OPPOSITION TO THIS APPLICATION.

6. THE BOARD HEARD EVIDENCE FROM MR. ROY AND FROM DAVID THERIAULT, THE PERSON WHO IS SHOWN ON THE APPLICATION FOR MEMBERSHIP FILED

ON BEHALF OF MR. ROY AS HAVING COLLECTED \$1.00 FROM MR. ROY. MR. THERIAULT TESTIFIED THAT MR. ROY IN FACT PAID \$1.00 TO HIM WITH RESPECT TO THE APPLICATION FOR MEMBERSHIP CARD IN THE APPLICANT SIGNED BY MR. ROY. MR. ROY, HOWEVER, VIGOROUSLY ASSERTED THAT HE HAD NOT PAID A DOLLAR TO MR. THERIAULT. THE BOARD WAS THUS CONFRONTED WITH TWO CONFLICTING VERSIONS OF WHAT ALLEGEDLY HAPPENED AT THE TIME WHEN MR. ROY SIGNED AN APPLICATION FOR MEMBERSHIP IN THE APPLICANT. MR. THERIAULT GAVE HIS EVIDENCE IN A FORTHRIGHT MANNER, WHILE MR. ROY CONTRADICTED HIMSELF ON ONE VITAL PORTION OF HIS TESTIMONY. MR. ROY TESTIFIED THAT HE HAD TOLD NO ONE THAT HE HAD NOT PAID A DOLLAR TO MR. THERIAULT WITH RESPECT TO HIS APPLICATION FOR MEMBERSHIP IN THE APPLICANT.

7. HOWEVER, MR. ROY WAS UNABLE TO INFORM THE BOARD OF WHO HAD TYPED THE LETTER TO THE BOARD WHEREIN IT WAS CLAIMED BY MR. ROY THAT HE HAD NOT IN FACT PAID THE DOLLAR IN QUESTION. MR. ROY INFORMED THE BOARD THAT IT WAS HIS SIGNATURE AT THE FOOT OF THE TYPED LETTER. FOR SOME REASON, WHICH WAS NOT MADE CLEAR TO THE BOARD, MR. ROY DID NOT KNOW WHO HAD TYPED THIS LETTER, HOW HE CAME TO SIGN IT, OR WHO HAD MAILED IT TO THE BOARD. HAVING REGARD TO THE ABOVE DISCREPANCY IN THE EVIDENCE OF MR. ROY, THE BOARD FINDS MR. THERIAULT TO BE MORE CREDIBLE WITNESS AND THEREFORE IS NOT PREPARED TO FIND THAT MR. ROY DID NOT PAY THE DOLLAR TO MR. THERIAULT AT THE TIME MR. ROY SIGNED THE APPLICATION FOR MEMBERSHIP IN THE APPLICANT.

8. WITH RESPECT TO THE STATEMENT OF DESIRE FILED IN THIS MATTER BY MR. ROY, THE BOARD FINDS THAT MR. ROY'S EVIDENCE WAS MOST UNSATISFACTORY. HE COULD NEITHER EXPLAIN TO THE BOARD WHO HAD PREPARED THE DOCUMENT FILED IN OPPOSITION TO THE APPLICATION NOR WHO HAD GIVEN IT TO HIM OR EVEN WHO HAD MAILED IT TO THE BOARD. HAVING REGARD TO THE COMPLETE LACK OF EVIDENCE REGARDING THE ORIGINATION, PREPARATION AND CIRCULATION OF THE STATEMENT OF DESIRE FILED IN THIS MATTER, THE BOARD IS NOT PREPARED TO HOLD THAT THE STATEMENT OF DESIRE IN OPPOSITION TO THIS APPLICATION CASTS DOUBT ON THE EVIDENCE OF MEMBERSHIP FILED BY THE APPLICANT SO AS TO CAUSE THE BOARD TO SEEK THE CONFIRMATORY EVIDENCE OF A REPRESENTATION VOTE.

9. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN SIXTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON FEBRUARY 11, 1972, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 92(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

10. IN THE RESULT, A CERTIFICATE WILL ISSUE TO THE APPLICANT.

1622-71-U: CANADIAN UNION OF OPERATING ENGINEERS - LOCAL 101 (COMPLAINANT) v. 400 UNIVERSITY AVENUE PROSPECT COMPANY (RESPONDENT).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS D. B. ARCHER AND J.E.C. ROBINSON, Q.C.

APPEARANCES AT THE HEARING: V. McMANUS AND H. McLACHLAN FOR THE COMPLAINANT, K. G. SCOTT AND E. FOX FOR THE RESPONDENT.

DECISION OF J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBER J.E.C. ROBINSON, Q.C.: APRIL 18, 1972.

1. THIS IS A COMPLAINT UNDER SECTION 79 OF THE LABOUR RELATIONS ACT.
2. HAVING HAD AN OPPORTUNITY TO ASSESS THE CREDIBILITY OF THE WITNESSES FROM THE MANNER IN WHICH THEY TESTIFIED, THEIR DEMEANOUR IN THE WITNESS BOX AND THE CONFLICTING EVIDENCE OF THE COMPLAINANT'S WITNESSES AND HAVING ASSESSED ALL THE EVIDENCE IN LIGHT OF THE CREDIBILITY OF THE WITNESSES, WE FIND THAT ON SATURDAY, FEBRUARY 12, 1972, ON THE RESPONDENT'S PREMISES DURING WORKING HOURS, HILDEBERTO FURTADO COLLABORATED WITH MANUEL NUNES IN AN ATTEMPT TO CAUSE FRANK DELGRANDE TO BECOME A MEMBER OF THE COMPLAINANT UNION AND THAT THEY USED INTIMIDATORY TACTICS IN THEIR ATTEMPT. WE FURTHER FIND THAT THE RESPONDENT HAD PREVIOUSLY WARNED BOTH MR. FURTADO AND MR. NUNES ABOUT ENGAGING IN UNION ACTIVITY ON COMPANY PREMISES FOLLOWING EARLIER COMPLAINTS FROM OTHER EMPLOYEES ABOUT THEIR ACTIVITIES. THE RESPONDENT WARNED THEM THAT SIMILAR ACTIVITIES WOULD RESULT IN THEIR DISMISSAL.
3. MR. DELGRANDE BECAME VERY AGITATED AND FRIGHTENED BY THE TACTICS ENGAGED IN BY MR. FURTADO AND MR. NUNES AND HE COMPLAINED TO HIS SUPERVISORS.
4. ON MONDAY, FEBRUARY 14TH THE RESPONDENT CONFRONTED MR. FURTADO WITH MR. DELGRANDE'S ACCUSATIONS IN THE PRESENCE OF MR. DELGRANDE. MR. FURTADO DID NOT DENY THE ALLEGATIONS. HE WAS THEN REMINDED OF THE EARLIER WARNING AND HIS EMPLOYMENT WITH THE RESPONDENT WAS TERMINATED.
5. ALTHOUGH THE COMPLAINANT UNION HAD APPLIED TO BE CERTIFIED AS BARGAINING AGENT FOR THE RESPONDENT'S EMPLOYEES ON DECEMBER 7, 1971, THERE WAS NO EVIDENCE THAT THE RESPONDENT HAD MADE ANY EFFORT TO INTERFERE WITH THE UNION'S CAMPAIGN TO ORGANIZE THE RESPONDENT'S EMPLOYEES. THE TERMINAL DATE FOR THE APPLICATION FOR CERTIFICATION HAD PASSED LONG BEFORE THE RESPONDENT WARNED MR. FURTADO OR MR. NUNES ABOUT THEIR ACTIVITIES AFTER COMPLAINTS HAD BEEN RECEIVED CONCERNING THEM. IN ADDITION, THE UNION WAS CERTIFIED AS BARGAINING AGENT TWO WEEKS PRIOR TO MR. FURTADO'S DISMISSAL.

6. HAVING REGARD TO ALL THE EVIDENCE, WE ARE SATISFIED THAT THE REAL REASON THE COMPANY DISCHARGED MR. FURTADO WAS BECAUSE OF THE INTIMIDATION ENGAGED IN BY MR. FURTADO ON COMPANY PREMISES DURING WORKING HOURS WHICH ACTIVITY FOLLOWED WARNINGS THAT FLOWED FROM COMPLAINTS ABOUT SIMILAR TACTICS. WE FURTHER FIND THAT THE RESPONDENT DID NOT DISCHARGE MR. FURTADO BECAUSE HE WAS A MEMBER OF THE UNION AS ALLEGED BY THE COMPLAINANT OR BECAUSE THE RESPONDENT WAS ATTEMPTING TO INTERFERE WITH THE UNION'S ATTEMPT TO BECOME CERTIFIED AS BARGAINING AGENT, SINCE THE UNION HAD ALREADY ACCOMPLISHED THIS. WE FIND THAT THE REAL REASON FOR THE DISCHARGE WAS BECAUSE OF THE INTIMIDATORY TACTICS ENGAGED IN BY MR. FURTADO. AS INDICATED ABOVE, THE DISCHARGE FOLLOWED AN EARLIER WARNING TO MR. FURTADO WHICH THE COMPANY FOUND NECESSARY TO GIVE WHEN EMPLOYEES COMPLAINED OF OTHER ACTS OF INTIMIDATION.

7. FOR THE ABOVE REASONS, THE COMPLAINT IS THEREFORE DISMISSED.

DECISION OF BOARD MEMBER D. B. ARCHER: APRIL 18, 1972.

THE COMPLAINANT MR. FURTADO ASKED THAT HE BE RETURNED TO HIS JOB BECAUSE HE WAS DISMISSED CONTRARY TO THE ACT. THE COMPANY CLAIMS HE WAS WARNED ABOUT TALKING UNION IN THE CAFETERIA, WHEN LATER HE WAS ACCUSED OF WATCHING THE DOOR WHILE A FELLOW EMPLOYEE ENDEAVOURED TO SIGN UP A MEMBER IN THE UNION HE WAS DISCHARGED.

MR. FURTADO DENIES BOTH CHARGES AND CLAIMS HE WAS NEVER REPRIMANDED OR WARNED. THE FACT THAT HE HAD TO GIVE EVIDENCE THROUGH A PORTUGUESE INTERPRETER MAKES IT RATHER DIFFICULT TO EXAMINE HIM IN DETAIL. UNDOUBTEDLY HE WAS CALLED INTO THE SUPERVISOR'S OFFICE WHERE THE SUPERVISOR ISSUED, IN MY OPINION, AN IMPOSSIBLE EDICT THAT EMPLOYEES CEASE DISCUSSION ABOUT THE UNION ON COMPANY PREMISES.

THE DISCHARGE IN MY OPINION IS UNWARRANTED AND UNNECESSARILY SEVERE AND NOT IN KEEPING WITH THE LETTER AND SPIRIT OF THE ACT WHICH STATES IN ITS PREAMBLE "IT IS IN THE PUBLIC INTEREST OF THE PROVINCE OF ONTARIO TO FURTHER THE HARMONIOUS RELATIONS BETWEEN EMPLOYERS AND EMPLOYEES BY ENCOURAGING THE PRACTICE OF COLLECTIVE BARGAINING...."

THE ACTS COMPLAINED OF SHOW NO INTERFERENCE WITH PRODUCTION OR ANY INTIMIDATION OF THE EMPLOYEES. THE COMPANY ADMITS MR. FURTADO WAS A COMPETENT WORKMAN AND A GOOD EMPLOYEE. IN VIEW OF THESE FACTS, TO FIRE A PERSON, WHICH IS INDUSTRIAL CAPITAL PUNISHMENT, IS AS I HAVE SAID BOTH UNNECESSARY AND UNDESIRABLE AND IN MY OPINION CONTRARY TO THE SPIRIT AND PROVISION OF THE ACT.

THEREFORE, I WOULD HAVE RETURNED MR. FURTADO TO HIS FORMER POSITION WITH FULL COMPENSATION FOR TIME LOST.

1577-71-R: ONTARIO HOUSING CORPORATION EMPLOYEES LOCAL 767, CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. DEL ZOTTO PROPERTY MANAGEMENT (RESPONDENT).

BEFORE: FRANK V. BOSCARIOL, VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND H. ADE.

DECISION OF THE BOARD: APRIL 20, 1972.

1. PURSUANT TO THE DECISIONS OF THE BOARD IN THIS MATTER RESPECTIVELY DATED MARCH 2 AND MARCH 13, 1972, MEETINGS OF THE PARTIES WERE CONVENED ON MARCH 27 AND MARCH 28, 1972, WHICH CULMINATED IN THE REPORT OF THE EXAMINER DATED APRIL 5, 1972.

2. HOWEVER, THE CONCLUDING PORTIONS OF THE SAID REPORT PROVIDE AS FOLLOWS:

"41. THE RESPONDENT TAKES THE POSITION THAT DUE TO THE ABSENCE OF THE GENERAL PROPERTY MANAGER, WHO IS THE CHIEF POLICY MAKER IN THE ORGANIZATION, AND THE FACT THAT HE WILL BE AVAILABLE MONDAY NEXT (APRIL 3RD), THEREFORE HE (COUNSEL FOR THE RESPONDENT) IS NOT IN A POSITION TO SUBMIT UNTIL THAT TIME THAT ALL THE FACTS BEARING ON ALL THE ISSUES BEFORE THE EXAMINER HAVE BEEN BROUGHT FORTH.

42. THE APPLICANT OBJECTS ON THE GROUNDS THAT THE PURPOSE OF THE EXAMINATION WAS TO INQUIRE INTO FACTS RATHER THAN POLICY AND IS IN OPPOSITION TO ANY CONTINUATION OF THE EXAMINATION BUT RESERVES THE RIGHT TO MAKE ADDITIONAL SUBMISSIONS SHOULD THE BOARD AUTHORIZE CONTINUATION OF THE EXAMINATION.

43. THE RESPONDENT STATES THE GENERAL PROPERTY MANAGER MAY HAVE FACTS RELATIVE TO THE ISSUES WHICH ARE NOT AVAILABLE FROM ANY OTHER SOURCE."

3. BY LETTER DATED APRIL 13, 1972, THE RESPONDENT ENCLOSED A WRITTEN STATEMENT FROM ALEXANDER T. THOMSON, THE GENERAL PROPERTY MANAGER AND REQUESTS THAT THE BOARD ALLOW THE SAID STATEMENT TO BE ADMITTED AS A SUPPLEMENT TO THE REPORT OF THE EXAMINER HEREIN.

4. BY LETTER DATED APRIL 14, 1972, THE APPLICANT OBJECTS TO THE BOARD ENTERTAINING THE SAID STATEMENT, BUT IN THE EVENT THAT THE BOARD DOES DECIDE TO CONSIDER THE SAID STATEMENT, FURTHER ADVISES THAT THE APPLICANT RESERVES ITS RIGHT OF CROSS-EXAMINATION AND REPLY IN THIS REGARD.

5. HAVING REGARD TO THESE CIRCUMSTANCES, THE BOARD DIRECTS THAT THE REGISTRAR LIST THIS MATTER FOR CONTINUATION OF HEARING FOR THE PURPOSE OF DETERMINING THE ADMISSIBILITY OF THE SAID STATEMENT, AND IN THE EVENT OF AN AFFIRMATIVE FINDING IN THIS REGARD, AFFORDING THE APPLICANT AN OPPORTUNITY OF CROSS-EXAMINATION AND REPLY.

1658-71-R: CLAIRE DUBEAU (APPLICANT) V. CANADIAN UNION OF GENERAL EMPLOYEES (RESPONDENT) V. TEKPAK AUTOMATED SYSTEMS LIMITED (INTERVENER).

BEFORE: R. A. FURNESS, VICE-CHAIRMAN AND BOARD MEMBERS E. BOYER AND F. W. MURRAY.

APPEARANCES AT THE HEARING: W. J. HEMMERICK, Q.C. FOR THE APPLICANT; NO ONE APPEARING FOR THE RESPONDENT; JOHN R. DINGLE FOR THE INTERVENER.

DECISION OF THE BOARD: APRIL 24, 1972.

1. THIS IS AN APPLICATION FOR A DECLARATION THAT THE RESPONDENT NO LONGER REPRESENTS THE EMPLOYEES IN THE BARGAINING UNIT FOR WHICH IT IS THE BARGAINING AGENT.

2. THIS APPLICATION WAS FILED ON FEBRUARY 23, 1972. THE RESPONDENT WAS CERTIFIED BY THE BOARD ON APRIL 6, 1971 AS THE BARGAINING AGENT OF EMPLOYEES OF THE INTERVENER IN A BARGAINING UNIT DEFINED AS "ALL OFFICE STAFF EMPLOYED BY THE RESPONDENT AT 29 RANGEMORE ROAD, TORONTO, SAVE AND EXCEPT SALESMEN, SUPERVISORS, PERSONS ABOVE THE RANK OF SALESMAN AND SUPERVISOR AND WAREHOUSEMEN PERSONNEL". THE RESPONDENT GAVE NOTICE UNDER SECTION 13 OF THE LABOUR RELATIONS ACT TO THE INTERVENER AND THE RESPONDENT AND THE INTERVENER BARGAINED. ON JUNE 14, 1971, THE MINISTER OF LABOUR GAVE NOTICE TO THE RESPONDENT AND THE INTERVENER THAT HE DID NOT CONSIDER IT ADVISABLE TO APPOINT A CONCILIATION BOARD. ON JULY 1, 1971, THE INTERVENER LAWFULLY LOCKED OUT THE EMPLOYEES IN THE BARGAINING UNIT REFERRED TO ABOVE.

3. THIS APPLICATION WAS FILED UNDER SECTION 53 OF THE LABOUR RELATIONS ACT. HOWEVER, IN THE ANDRE CONSTRUCTION COMPANY CASE, OLRB MONTHLY REPORT, JULY 1970, P. 512, THE BOARD HELD THAT FORMER SECTION 46 (NOW SECTION 53) OF THE LABOUR RELATIONS ACT IS A PROCEDURAL SECTION WHICH DEALS WITH TIMELINESS OF APPLICATIONS FOR CERTIFICATION OR

DECLARATIONS THAT A TRADE UNION NO LONGER REPRESENTS THE EMPLOYEES AND IS NOT A REMEDIAL SECTION. NO SUBSTANTIVE REMEDY IS PROVIDED BY SECTION 53 OF THE LABOUR RELATIONS ACT.

4. IF SOME OTHER SECTION OF THE LABOUR RELATIONS ACT PROVIDES A REMEDY THEN THE INSTANT APPLICATION WOULD BE TIMELY BECAUSE ALL THE REQUIREMENTS OF SECTION 53(3) OF THE LABOUR RELATIONS ACT HAVE BEEN SATISFIED.

5. SECTIONS 48, 50, 51 AND 52 OF THE LABOUR RELATIONS ACT CLEARLY HAVE NO APPLICATION TO THE FACTS OF THE INSTANT APPLICATION. SECTION 95(1) OF THE LABOUR RELATIONS ACT AUTHORIZES THE BOARD TO RECONSIDER ANY DECISION, ORDER, DIRECTION, DECLARATION OR RULING MADE BY IT AND VARY OR REVOKE ANY SUCH DECISION, ORDER, DIRECTION, DECLARATION OR RULING. EVEN ASSUMING THAT THE INSTANT APPLICATION OUGHT TO BE TREATED AS A REQUEST FOR A RECONSIDERATION OF THE DECISION OF THE BOARD DATED APRIL 6, 1971 WHEREBY A CERTIFICATE ISSUED TO THE RESPONDENT, THERE IS NOTHING IN THE MATERIAL BEFORE THE BOARD THAT WOULD CAUSE THE BOARD TO RECONSIDER AND REVOKE THE DECISION OF THE BOARD DATED APRIL 6, 1971 REFERRED TO ABOVE AND REVOKE THE CERTIFICATE ISSUED THEREUNDER.

6. EVEN ASSUMING THAT THE APPLICANT HAD MADE THE INSTANT APPLICATION UNDER SECTION 49 OF THE LABOUR RELATIONS ACT, IT IS CLEAR THAT, NOTWITHSTANDING THAT THE PROVISIONS OF SECTION 53(3) OF THE LABOUR RELATIONS ACT HAVE BEEN SATISFIED IN THE INSTANT APPLICATION, THE ONE YEAR SUBSEQUENT TO THE DATE OF CERTIFICATION AS CONTEMPLATED BY SECTION 49(1) OF THE LABOUR RELATIONS ACT HAD NOT ELAPSED.

7. HAVING REGARD TO THE FOREGOING, THIS APPLICATION IS UNTIMELY AND IS ACCORDINGLY DISMISSED.

1849-72-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA
LOCAL UNION 249 KINGSTON ONTARIO (APPLICANT) V. J. G. FITZPATRICK
CONSTRUCTION LIMITED (RESPONDENT).

BEFORE: R. A. FURNESS, VICE-CHAIRMAN AND BOARD MEMBERS H. J. F. ADE AND E. BOYER.

DECISION OF VICE-CHAIRMAN R. A. FURNESS AND BOARD MEMBER H. J. F. ADE: APRIL 25, 1972.

1. THE RESPONDENT IN PARAGRAPH 13 OF ITS REPLY HAS ALLEGED THAT THERE WILL BE AN INCREASE IN THE NUMBER OF EMPLOYEES IN THE BARGAINING UNIT FOR WHICH THE APPLICANT IS SEEKING CERTIFICATION. IN PARAGRAPH 14(3) OF ITS REPLY THE RESPONDENT HAS REQUESTED A HEARING OF THIS APPLICATION FOR CERTIFICATION IN ORDER TO SUBMIT EVIDENCE IN REGARD TO THE MATTERS REFERRED TO IN PARAGRAPH 13 OF ITS REPLY.

2. THIS MATTER WILL BE LISTED FOR HEARING. THE PURPOSE OF THE HEARING WILL BE TO CONSIDER ALL OUTSTANDING ISSUES INCLUDING AN OPPORTUNITY FOR THE PARTIES TO ADDUCE EVIDENCE AND MAKE REPRESENTATIONS ON THE MATTERS RAISED BY THE RESPONDENT IN PARAGRAPH 13 OF ITS REPLY.

3. THE MATTER IS REFERRED TO THE REGISTRAR.

DECISION OF BOARD MEMBER E. BOYER: APRIL 25, 1972.

ASSUMING THE RESPONDENT ESTABLISHES THE FACTS SET OUT IN PARAGRAPH 13 OF ITS REPLY AND HAVING REGARD TO SECTION 108(2) OF THE LABOUR RELATIONS ACT, HAVING REGARD TO THE LONG STANDING PRACTICE OF THE BOARD AND HAVING REGARD TO THE ROYAL COMMISSION ON LABOUR-MANAGEMENT RELATIONS IN THE CONSTRUCTION INDUSTRY (GOLDENBERG REPORT) ISSUED IN 1962, THE EMPLOYEES AFFECTED BY THIS APPLICATION WOULD BE DENIED COLLECTIVE BARGAINING. I WOULD HAVE GRANTED CERTIFICATION TO THE APPLICANT WITHOUT A HEARING SINCE THE APPLICANT HAS THE REQUIRED EVIDENCE OF MEMBERSHIP NECESSARY FOR OUTRIGHT CERTIFICATION AT THIS TIME.

1607-71-U: SERVICE EMPLOYEES UNION, LOCAL 532 (COMPLAINANT) V. ST. ELIZABETH NURSING HOME (RESPONDENT).

- AND -

1631-71-U: SERVICE EMPLOYEES UNION, LOCAL 532 (COMPLAINANT) V. ST. ELIZABETH NURSING HOME (RESPONDENT).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND P. J. O'KEEFE.

APPEARANCES AT THE HEARING: B. A. DUNN, L. PIERSANTI AND H. PANKO FOR THE COMPLAINANT, I. STEINBERG FOR THE RESPONDENT.

DECISION OF THE BOARD: APRIL 24, 1972.

1. THE BOARD DIRECTS THAT THE ABOVE COMPLAINTS BE CONSOLIDATED.

2. AT THE OUTSET OF THE HEARING IN THIS MATTER, COUNSEL FOR THE RESPONDENT ADVISED THE BOARD THAT HE HAD BEEN RETAINED BY TERENCE ALAN WHELAN, THE SOLICITOR FOR THE RESPONDENT, AND HAD BEEN INSTRUCTED TO REQUEST AN ADJOURNMENT OF THIS MATTER ON THE GROUNDS THAT MR. WHELAN WAS, AT THE TIME, ENGAGED IN ANOTHER MATTER BEFORE THE COUNTY COURT OF THE COUNTY OF HALTON. THE BOARD WAS ADVISED THAT THE RESPONDENT WAS MOST DESIROUS THAT MR. WHELAN REPRESENT IT AT THE HEARING IN THE INSTANT CASE SINCE HE HAD ACTED FOR THE RESPONDENT FOR A PERIOD OF MANY YEARS.

3. THE FACTS OF THIS CASE ARE AS FOLLOWS. THE COMPLAINTS IN THIS MATTER WERE FILED ON FEBRUARY 15 AND FEBRUARY 18, 1972. FOLLOWING AN INVESTIGATION OF THE COMPLAINTS BY THE BOARD'S FIELD OFFICER, THE BOARD, ON MARCH 29, 1972, DIRECTED THAT THESE MATTERS BE LISTED FOR HEARING. THE PARTIES WERE ADVISED BY A NOTICE OF HEARING DATED MARCH 30, 1972 THAT THESE MATTERS WOULD BE HEARD BY THE BOARD AT TORONTO ON THURSDAY, APRIL 20, 1972 AT 9:30 O'CLOCK IN THE FORENOON.

4. MR. WHELAN RECEIVED THE NOTICES OF HEARING ON MONDAY, APRIL 3, 1972 BY REGISTERED MAIL. ON APRIL 5, 1972 MR. WHELAN WROTE THE FOLLOWING LETTER TO THE BOARD:

I ACKNOWLEDGE RECEIPT OF YOUR SEPARATE REGISTERED LETTERS DATED MARCH 30TH, 1972, WITH REFERENCE TO EACH OF THE ABOVE-NOTED MATTERS, AND WOULD ADVISE YOU THAT I EXPECT TO FILE MY CLIENT'S REPLY ON OR BEFORE APRIL 11TH, 1972.

I DO NOTE, HOWEVER, THAT I AM OTHERWISE ENGAGED ON THURSDAY, APRIL 20TH, 1972, AT THE APPOINTED HOUR, AND WOULD ASK THAT IF AT ALL POSSIBLE THAT BOTH MATTERS BE ADJOURNED FOR ONE WEEK TO THURSDAY, APRIL 27TH, 1972 AT 9:30 A.M.

AS THERE IS SOME URGENCY HERE, I WOULD HOPE TO HEAR FROM YOU AS SOON AS POSSIBLE.

5. ON APRIL 6, 1972 THE DEPUTY REGISTRAR OF THE BOARD REPLIED TO MR. WHELAN AS FOLLOWS:

RECEIPT IS ACKNOWLEDGED OF YOUR LETTER OF THE 5TH INSTANT IN THE ABOVE MATTERS.

WITH RESPECT TO ADJOURNMENTS OF HEARINGS, I POINT OUT THAT THEY ARE GRANTED ONLY ON THE CONSENT OF THE PARTIES CONCERNED, TO A DATE TO BE SET BY THE BOARD. THEREFORE, BEFORE ANY ADJOURNMENT IS CONSIDERED IN THESE CASES, IT IS NECESSARY FOR YOU TO OBTAIN THE CONSENT OF THE COMPLAINANT AND HAVE IT SO NOTIFY ME OF SUCH CONSENT, IN WRITING, AT THE EARLIEST POSSIBLE OPPORTUNITY.

6. ON APRIL 10, 1972 MR. WHELAN PREPARED A FORMAL CONSENT TO AN ADJOURNMENT OF THE ABOVE MATTERS AND FORWARDED THE SAME BY ORDINARY MAIL TO MESSRS LEVINSON, SACK AND DUNN, THE SOLICITORS FOR THE COMPLAINANT. MR. WHELAN ALSO FILED A REPLY TO THE COMPLAINTS ON BEHALF OF THE RESPONDENT ON APRIL 10, 1972.

7. ON APRIL 13, 1972 MR. LEVINSON TELEPHONED MR. WHELAN AND ADVISED HIM THAT HIS CLIENTS WOULD NOT CONSENT TO AN ADJOURNMENT AS REQUESTED.

8. AT THE HEARING IN THIS MATTER COUNSEL FOR THE RESPONDENT URGED THE BOARD TO GRANT THE ADJOURNMENT AND ADVISED THAT THE RESPONDENT WAS NOT MERELY ATTEMPTING TO DELAY THE PROCEEDINGS BUT WAS PREPARED TO PROCEED ON ANY SUBSEQUENT DATE. APART FROM MR. STEINBERG, WHO ACTED AS COUNSEL FOR THE RESPONDENT, NO OTHER REPRESENTATIVE OR OFFICIAL OF THE RESPONDENT WAS PRESENT AT THE HEARING IN THIS MATTER.

9. COUNSEL FOR THE COMPLAINANT STRONGLY OPPOSED THE REQUEST FOR AN ADJOURNMENT AND INDICATED THAT THE COMPLAINANT WAS PREPARED AND ANXIOUS TO PROCEED WITH THE HEARING AS SCHEDULED.

10. THE BOARD RECESSED AND AFTER CONSIDERING THE REQUEST FOR ADJOURNMENT THE BOARD RULED AT THE HEARING THAT IT MUST DENY THE REQUEST. THE BOARD POINTED OUT THAT MR. WHELAN WAS FULLY AWARE, WHEN HE WAS SERVED WITH NOTICE OF THE HEARING, THAT HE WAS OTHERWISE COMMITTED ON THE DATE SCHEDULED FOR THE HEARING. ACCORDINGLY, THIS WAS NOT A CASE WHERE COUNSEL WAS FACED WITH A SITUATION WHERE, IMMEDIATELY PRIOR TO A BOARD HEARING, HE IS UNEXPECTEDLY REQUIRED TO APPEAR BEFORE A COURT OR OTHER TRIBUNAL. IN SUCH LATTER SITUATION, COUNSEL WOULD HAVE LITTLE OR NO OPPORTUNITY TO PROPERLY INSTRUCT OTHER COUNSEL AND THE PARTY REPRESENTED WOULD SIMILARLY HAVE NO SUCH OPPORTUNITY. THE FACTS OF THIS CASE CLEARLY INDICATE THAT MR. WHELAN HAD AMPLE OPPORTUNITY TO ADVISE HIS CLIENT THAT HE WOULD BE UNABLE TO ATTEND THE SCHEDULED HEARING BEFORE THE BOARD BECAUSE OF AN EARLIER COMMITMENT. HE COULD HAVE SUGGESTED THAT HIS CLIENT INSTRUCT OTHER COUNSEL OR, IF DESIRED, HE COULD HAVE OBTAINED PERMISSION FROM HIS CLIENT TO INSTRUCT OTHER COUNSEL CONCERNING THE MERITS OF THE RESPONDENT'S DEFENCE TO THE COMPLAINTS. INSTEAD, MR. WHELAN CHOSE TO INSTRUCT MR. STEINBERG TO REQUEST AN ADJOURNMENT OF THE COMPLAINTS. THE FACT THAT NO ARRANGEMENTS WERE MADE FOR THE NECESSARY OFFICIALS OR WITNESSES OF THE RESPONDENT TO BE IN ATTENDANCE AT THE HEARING DID NOT ENHANCE THE MERITS OF THE REQUEST FOR AN ADJOURNMENT.

11. WHILE A LITIGANT NORMALLY HAS THE RIGHT TO CHOOSE THE SERVICES OF A PARTICULAR COUNSEL TO ACT ON HIS BEHALF, THIS RIGHT MUST BE WEIGHED IN THE LIGHT OF AND SUBJECT TO THE RIGHT OF THE OPPOSING PARTY TO PROCEED WITH THE HEARING AS ORIGINALLY SCHEDULED IN AN EXPEDITIOUS MANNER. THE RIGHTS OF THE COMPLAINANT IN THIS MATTER CANNOT BE DETERMINED OR ABRIDGED BECAUSE COUNSEL FOR ONE OF THE PARTIES CHOOSES TO TAKE INSTRUCTIONS ON A MATTER WHEN HE KNOWS FROM THE OUTSET THAT HE WILL BE UNABLE TO APPEAR AT THE HEARING WHICH HAS BEEN SCHEDULED BY THE BOARD. IT MUST BE REMEMBERED THAT THE COMPLAINANT

DID NOT CHOOSE THE DATE FOR THE HEARING IN THIS MATTER. THE BOARD SCHEDULED THE HEARING AND IN SO DOING CHOSE THE EARLIEST AVAILABLE DATE THAT ITS CALENDAR OF HEARINGS WOULD PERMIT.

12. IF THE MATTER WAS ADJOURNED THE NEXT EARLIEST DATE WOULD BE SOME THREE TO FOUR WEEKS AFTER THE DATE ORIGINALLY SCHEDULED.

13. IT IS RECOGNIZED THAT THE TIME LIMITS SET OUT IN THE ACT AND IN THE BOARD'S RULES OF PROCEDURE REQUIRE THE BOARD AND THE PARTIES TO ACT EXPEDITIOUSLY. THE NATURE OF THE PROCEEDINGS AND THE RELATIONSHIP BETWEEN THE PARTIES MAKE TIME OF THE ESSENCE. DELAYS, WHILE UNAVOIDABLE AT TIMES BECAUSE OF CIRCUMSTANCES BEYOND THE CONTROL OF EVERYONE CONCERNED, SHOULD BE AVOIDED WHEREVER POSSIBLE. THIS IS ESPECIALLY TRUE WHEN DEALING WITH COMPLAINTS UNDER SECTION 79 OF THE ACT WHERE THE DISPUTE BETWEEN THE PARTIES INVOLVES THE EMPLOYMENT OF A PERSON. A WORKMAN WHO HAS BEEN DISCHARGED HAS THE RIGHT UNDER THE ACT AND THE RULES OF PROCEDURE TO HAVE A DETERMINATION MADE WITH RESPECT TO HIS COMPLAINT AS SOON AS POSSIBLE. USUALLY THE EMPLOYER IS EQUALLY CONCERNED WITH THE EXPEDITIOUS HANDLING OF SUCH COMPLAINTS BECAUSE OF THE CONTINGENT LIABILITY INVOLVED.

14. IT IS THE BOARD'S REGULAR PRACTICE TO REFUSE REQUESTS FOR ADJOURNMENTS WHICH ARE NOT MADE ON THE CONSENT OF ALL THE PARTIES, UNLESS OF COURSE THE REASON FOR THE REQUEST FOR AN ADJOURNMENT IS BEYOND THE CONTROL OF THE PARTY MAKING THE REQUEST (E.G. WHERE IT IS PROVEN THAT AN ESSENTIAL WITNESS IS UNABLE TO ATTEND BECAUSE OF A SERIOUS ILLNESS, ETC.).

15. IT IS RECOGNIZED THAT THIS PRACTICE CREATES PRESSURES ON COUNSEL APPEARING BEFORE THE BOARD. WHILE THE BOARD HAS THE GREATEST SYMPATHY FOR COUNSEL, THE BOARD CANNOT CONDUCT ITS BUSINESS SUBJECT TO THE CONVENIENCE OF COUNSEL. THE INTEREST OF THE PARTIES IS OF PRIME CONCERN TO THE BOARD AND WHERE THESE INTERESTS CONFLICT, THE BOARD MUST WEIGH THE CONFLICTING INTERESTS AND MAKE ITS DETERMINATION ACCORDINGLY (SEE NICK MASNEY HOTELS LIMITED CASE, OLRB MONTHLY REPORT, NOVEMBER 1968, P. 833, AND DECEMBER 1968, P. 965).

16. SINCE PROPER NOTICE OF HEARING WAS SERVED ON THE RESPONDENT AND SINCE THE RESPONDENT ELECTED NOT TO ATTEND AND PARTICIPATE AT THE HEARING FOR A REASON WITH RESPECT TO WHICH THE RESPONDENT COULD HAVE EXERTED CONTROL, I.E. THE RESPONDENT COULD HAVE INSTRUCTED OTHER COUNSEL, IT MUST THEREFORE BE FOUND THAT THE RESPONDENT HAD FULL OPPORTUNITY TO PRESENT EVIDENCE AND TO MAKE SUBMISSIONS WITH RESPECT TO THE COMPLAINTS IN THIS MATTER AT THE HEARING ON APRIL 20, 1972. AS INDICATED EARLIER THE BOARD THEREFORE DENIED THE REQUEST FOR AN ADJOURNMENT.

17. AFTER THE BOARD ANNOUNCED ITS RULING THAT THE REQUEST FOR ADJOURNMENT WAS DENIED, MR. STEINBERG ADVISED THE BOARD THAT HIS INSTRUCTIONS WERE TO REQUEST LEAVE OF THE BOARD TO WITHDRAW FROM THE HEARING. THE BOARD PUT MR. STEINBERG ON NOTICE THAT IF HE CHOSE TO WITHDRAW FROM THE HEARING THE BOARD WOULD PROCEED WITH THE MERITS OF THE COMPLAINTS IN HIS ABSENCE.

18. HAVING CONSIDERED ALL THE EVIDENCE ADDUCED ON BEHALF OF THE COMPLAINANT, WE ARE SATISFIED THAT THE COMPLAINANT HAS ESTABLISHED THE ONUS UPON IT AND HAS PROVED THAT MRS. HELEN PANKO WAS DISCHARGED BY THE RESPONDENT ON FEBRUARY 17, 1972 CONTRARY TO THE PROVISIONS OF SECTION 58 OF THE LABOUR RELATIONS ACT.

19. THE BOARD THEREFORE DETERMINES THAT:-

- (A) MRS. HELEN PANKO SHALL BE REINSTATED FORTHWITH IN THE POSITION SHE HELD AT THE TIME OF HER DISCHARGE.
- (B) THAT THE RESPONDENT PAY TO MRS. HELEN PANKO THE SUM OF \$596.20 FORTHWITH AS COMPENSATION FOR LOSS OF EARNINGS BETWEEN THE DATE OF HER DISCHARGE AND THE DATE OF THE HEARING IN THESE MATTERS LESS THE AMOUNT OF MONEY EARNED BY MRS. PANKO DURING THAT PERIOD OF TIME.
- (C) THAT THE PARTIES MEET FORTHWITH WITH A VIEW TO AGREEING ON THE AMOUNT OF THE LOSS OF EARNINGS THAT MRS. PANKO SUSTAINED BY REASON OF HER HAVING BEING DISCHARGED CONTRARY TO THE ACT BETWEEN THE DATE OF THE HEARING IN THESE MATTERS AND THE DATE OF HER REINSTATEMENT.
- (D) IN DEFAULT OF AN AGREEMENT BETWEEN THE PARTIES ON THE AMOUNT REFERRED TO IN PARAGRAPH (C) HEREOF WITHIN 14 DAYS AFTER THE RELEASE OF THIS DETERMINATION OR WITHIN SUCH FURTHER PERIOD AS THE PARTIES MAY MUTUALLY AGREE UPON, AT THE REQUEST OF EITHER PARTY, THE BOARD WILL HOLD A FURTHER HEARING AT WHICH THE PARTIES WILL HAVE THE OPPORTUNITY TO PRESENT EVIDENCE AND MAKE REPRESENTATIONS AS TO ANY ADDITIONAL AMOUNT TO BE PAID TO MRS. PANKO.

20. THE BOARD FURTHER DIRECTS THAT THE RESPONDENT'S OFFICIALS REFRAIN FROM ENGAGING IN ANY ACTIVITY WHICH CAN PROPERLY BE CONSTRUED AS THREATENING, COERCING OR INTIMIDATING ANY OF THE RESPONDENT'S EMPLOYEES IN REGARD TO THEIR MEMBERSHIP IN THE COMPLAINANT TRADE UNION OR ANY OTHER LAWFUL UNION ACTIVITY.

1415-71-U: CANADIAN UNION OF PUBLIC EMPLOYEES (COMPLAINANT) v. CORPORATION OF THE TOWN OF THOROLD (RESPONDENT).

BEFORE: RORY OF EGAN, VICE-CHAIRMAN AND BOARD MEMBERS J. D. BELL AND A. MAIN.

APPEARANCES AT THE HEARING: T. ARMSTRONG AND ERNEST ROVET FOR THE COMPLAINANT; C. G. RIGGS, A. P. STEPHEN, R. K. HOLLAND AND C. H. ORT FOR THE RESPONDENT.

DECISION OF THE BOARD:

APRIL 27, 1972.

1. THE NAME "TOWN OF THOROLD" APPEARING IN THE STYLE OF CAUSE OF THIS APPLICATION AS THE NAME OF THE RESPONDENT IS AMENDED TO READ: "CORPORATION OF THE TOWN OF THOROLD".
2. THIS IS A COMPLAINT BROUGHT UNDER SECTION 79 OF THE LABOUR RELATIONS ACT IN WHICH THE COMPLAINANT ALLEGES THAT WILLIAM LACHANSE HAS BEEN DEALT WITH BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF SECTIONS 58 AND 61 OF THE ACT. THE COMPLAINANT REQUESTS THAT THE GRIEVOR BE REINSTATED IN HIS FORMER POSITION WITHOUT LOSS OF PAY OR OTHER BENEFITS.
3. THE COMPLAINANT ALLEGES THAT ON OR ABOUT DECEMBER 13 AND 14, 1971, THE TOWN ENGINEER, MR. PAUL STEPHEN, THE RESPONDENT'S PUBLIC WORKS COMMITTEE AND THE COUNCIL OF THE CORPORATION OF THE TOWN OF THOROLD, DEALT WITH LACHANSE CONTRARY TO THE ABOVEMENTIONED PROVISIONS OF THE ACT IN TERMINATING THE SERVICE OF LACHANSE BECAUSE OF HIS ACTIVITY IN AND SUPPORT FOR THE COMPLAINANT UNION.
4. AT THE TIME OF HIS TERMINATION, MR. LACHANSE WAS EMPLOYED AS BUILDING INSPECTOR FOR THE RESPONDENT, A POSITION WHICH HE HAD HELD SINCE THE CREATION OF THE PRESENT CORPORATION OF THE TOWN OF THOROLD ON JANUARY 1, 1970. BEFORE THAT TIME, HE HAD BEEN EMPLOYED BY THE TOWNSHIP OF THOROLD AS A BUILDING INSPECTOR. HE HAD ALSO BEEN A PLUMBING, TRENCHING AND WEED INSPECTOR.
5. THERE IS NO DOUBT UPON THE EVIDENCE THAT LACHANSE WAS AN ACTIVE SUPPORTER OF THE COMPLAINANT UNION. IN THE INITIAL STAGES OF ORGANIZATION HE HAD SPOKEN TO A NUMBER OF HIS FELLOW EMPLOYEES IN AN ATTEMPT TO SHOW THEM WHERE THE UNION WOULD HELP THEM AND GIVE THEM BARGAINING POWER. HE SIGNED HIS OWN CARD ON AUGUST 10, 1971. WHEN ASKED IF HE HAD TAKEN ANY SUBSEQUENT ACTION IN SUPPORT OF THE UNION, HE SAID THAT HE HAD DISCUSSED THE ACTIVITIES WITH FELLOW EMPLOYEES WHOM IT WAS THOUGHT MIGHT NOT SUPPORT THE UNION. HE HAD ALSO LEFT HOSPITAL WHERE HE HAD BEEN CONFINED AS THE RESULT OF A HEART ATTACK TO CAST A BALLOT IN THE

REPRESENTATION VOTE HELD BY THE ONTARIO LABOUR RELATIONS BOARD ON NOVEMBER 24, 1971. A VOTE WHICH, INCIDENTALLY, THE UNION WON BY ONE VOTE.

6. IT IS EQUALLY CLEAR ON THE EVIDENCE THAT IT WAS KNOWN TO HIS IMMEDIATE SUPERIOR, MR. STEPHEN, AND TO THE MEMBERS OF THE PUBLIC WORKS COMMITTEE AND OTHER MEMBERS OF COUNCIL THAT LACHANSE WAS ACTIVELY SUPPORTING THE UNION. THERE IS NO DOUBT THAT LACHANSE AND STEPHEN MADE FREQUENT REFERENCES TO THE UNION AND TO LACHANSE'S PART IN ITS ACTIVITIES DURING THE COURSE OF THEIR DAY TO DAY CONVERSATIONS.

7. MR. STEPHEN HAD BEEN EMPLOYED AS ASSISTANT TOWN ENGINEER SINCE SEPTEMBER 1970 AND IN JULY 1971 WAS PROMOTED TO THE POSITION OF TOWN ENGINEER. MR. LACHANSE, AS ALREADY NOTED, CAME UNDER THE DIRECT SUPERVISION OF MR. STEPHEN.

8. THE EVIDENCE OF ALL WITNESSES, INCLUDING THAT OF MR. LACHANSE HIMSELF, LEAVES NO DOUBT WHATSOEVER THAT ALMOST FROM THE MOMENT OF HIS APPOINTMENT AS TOWN ENGINEER, A CLASH DEVELOPED BETWEEN STEPHEN AND LACHANSE. LACHANSE'S EVIDENCE AND HIS ATTITUDE WHILE TESTIFYING CLEARLY INDICATED THAT HE HAD DIFFICULTY IN ACCEPTING THE FACT THAT HE WAS REQUIRED TO TAKE INSTRUCTIONS FROM MR. STEPHEN.

9. THE EVIDENCE OF STEPHEN AND OF MEMBERS OF COUNCIL LEADS IRRESISTABLY TO THE CONCLUSION THAT THEY WERE EXTREMELY DISTURBED BY WHAT THEY FELT WAS LACHANSE'S ATTITUDE OF RESENTMENT TO ORDERS AND HIS INABILITY OR REFUSAL TO KEEP HIS WORKING ACTIVITIES WITHIN THE LIMITS OF HIS JOB AS THE TOWN ENGINEER, THE WORKS COMMITTEE AND A NUMBER OF MEMBERS OF THE TOWN COUNCIL SAW THEM AND ENDEAVOURED TO EXPLAIN TO HIM. WE MIGHT STATE AT THIS POINT THAT NO WHERE IN THE EVIDENCE DOES THERE APPEAR ANY SUGGESTING THAT LACHANSE WAS INCOMPETENT IN THE PERFORMANCE OF THE TASKS WHICH HIS JOB INVOLVED. THE COMPLAINT OF MR. STEPHEN, OF THE WORKS COMMITTEE AND OF THE MAJORITY OF THE COUNCIL IN GENERAL WAS WITH RESPECT TO HIS ATTITUDE BOTH INTERNALLY AND IN HIS CONTACTS WITH THE PUBLIC BUT NOT AGAINST HIS TECHNICAL QUALIFICATIONS OR COMPETENCE.

10. WE HAVE GIVEN FULL CONSIDERATION TO ALL OF THE EVIDENCE BOTH DIRECT AND INFERENTIAL AND TO THE SUBMISSIONS OF COUNSEL IN THIS MATTER. ON THE BASIS OF ALL OF THE EVIDENCE, WE FIND THAT THE COMPLAINANT HAS NOT DISCHARGED THE ONUS RESTING UPON IT TO ESTABLISH THAT THE TERMINATION OF MR. LACHANSE'S EMPLOYMENT WHICH, WE FIND, CAME ABOUT AS THE RESULT OF THE UNANIMOUS RECOMMENDATION OF THE PUBLIC WORKS COMMITTEE TO THE COUNCIL, WAS BECAUSE OF HIS UNION ACTIVITIES.

11. THE COMPLAINT IS THEREFORE DISMISSED.

1351-71-U: WILLIAM CAMPBELL (COMPLAINANT) V. INTER-CITY TRUCK LINES LIMITED, AND TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, LOCAL UNION 880 (RESPONDENTS).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS J. D. BELL AND O. HODGES.

APPEARANCES AT THE HEARING: B. J. GOODAL AND WILLIAM CAMPBELL FOR THE COMPLAINANT; A. DROMBOLIS AND B. FROESE FOR THE CORPORATE RESPONDENT; L. PAROIAN AND A. POLAND FOR THE RESPONDENT UNION.

DECISION OF THE BOARD: APRIL 28, 1972.

1. THE NAME "INTER CITY TRUCK LINES, AND TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, LOCAL 880" APPEARING IN THE STYLE OF CAUSE OF THIS APPLICATION AS THE NAME OF THE RESPONDENTS IS AMENDED TO READ: "INTER-CITY TRUCK LINES LIMITED, AND TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, LOCAL UNION 880".

2. THIS IS A COMPLAINT UNDER SECTION 79 OF THE LABOUR RELATIONS ACT IN WHICH THE COMPLAINANT ALLEGED THAT HE HAD BEEN DEALT WITH BY THE RESPONDENTS CONTRARY TO THE PROVISIONS OF SECTIONS 60 AND 58 OF THE LABOUR RELATIONS ACT.

3. THE CORPORATE RESPONDENT RAISED THE QUESTION OF THE JURISDICTION OF THE BOARD TO HEAR THE COMPLAINT ON THE GROUNDS THAT IT CAME UNDER THE JURISDICTION OF THE CANADA LABOUR RELATIONS BOARD.

4. THE RESPONDENT UNION WAS CERTIFIED BY THE CANADA LABOUR RELATIONS BOARD AS BARGAINING AGENT FOR THE COMPANY. CONCILIATION SERVICES HAVE BEEN PROVIDED TO THE RESPONDENTS BY THAT BOARD.

5. THE EVIDENCE IS THAT THE CORPORATE RESPONDENT WAS INCORPORATED UNDER THE LAWS OF THE GOVERNMENT OF CANADA. IT IS PROPERLY LICENSED TO TRANSPORT GOODS FROM ONTARIO TO THE UNITED STATES AND OTHER PROVINCES OF CANADA AND THAT IT REGULARLY DOES SO WITH ABOUT THIRTY PER CENT OF ITS BUSINESS BEING INTERPROVINCIAL, FORTY PER CENT INTERNATIONAL AND THE REMAINDER INTRA-PROVINCIAL. THE COMPANY MOVES GOODS BETWEEN ITS TERMINALS IN DETROIT AND BUFFALO IN THE UNITED STATES AND IN THE PROVINCES OF QUEBEC, MANITOBA, SASKATCHEWAN AND ALBERTA AND, OF COURSE, ONTARIO.

6. COUNSEL FOR THE APPLICANT ARGUED THAT THE CHATHAM DEPOT, WHERE THE COMPLAINANT IS EMPLOYED, WAS SEVERABLE FROM THE MAIN OPERATION IN THAT THE EMPLOYEES ARE ALL RESIDENTS OF CHATHAM DOING LOCAL WORK AND THE DEPOT HAS NO EXTENSION OR CONNECTION TO POINTS OUTSIDE ONTARIO SO AS TO CAUSE THAT PART OF THE CORPORATE RESPONDENT'S BUSINESS

TO FALL UNDER THE JURISDICTION OF THE GOVERNMENT OF CANADA.

7. THERE IS SOME DOUBT UPON THE EVIDENCE AS TO WHETHER DRIVERS BASED IN CHATHAM OPERATE EQUIPMENT OF THE CORPORATE RESPONDENT OUTSIDE ONTARIO. IT IS CLEAR, HOWEVER, THAT TRAILER LOADS ENTERING AND LEAVING CHATHAM IN THE CORPORATE RESPONDENT'S VEHICLES ARE TRANSPORTED ACROSS THE ONTARIO BOUNDARY.

8. IN OUR OPINION, THE CHATHAM OPERATION FORMS AN INTEGRAL PART OF AND IS ONE OF A NUMBER OF TERMINALS USED IN THE OVERALL OPERATION OF THE CORPORATE RESPONDENT'S TRANSPORTATION BUSINESS AND IS NOT SEVERABLE.

9. THE BOARD HEREBY CONFIRMS THE DECISION ANNOUNCED AT THE HEARING OF THE MATTER DISMISSING THE COMPLAINT AGAINST THE CORPORATE RESPONDENT ON THE GROUNDS THAT THE EVIDENCE ESTABLISHES THAT UNDERTAKING OF THE CORPORATE RESPONDENT FALLS WITHIN THE PROVISIONS OF SECTION 92(10)(A) OF THE BRITISH NORTH AMERICA ACT AND THAT THIS BOARD CONSEQUENTLY IS WITHOUT JURISDICTION TO HEAR THAT COMPLAINT. [SEE RE: TANK TRUCK TRANSPORT LTD. (1961) 25 D.L.R. (2d) 161; REFERENCE RE VALIDITY OF INDUSTRIAL RELATIONS AND DISPUTES INVESTIGATION ACT (CAN) & APPLICABILITY IN RESPECT OF CERTAIN EMPLOYEES OF EASTERN CANADA STEVEDORING CO. [1955] D.L.R. 721 S.C.R. 529].

10. COUNSEL FOR THE RESPONDENT ARGUED FURTHER THAT NOTWITHSTANDING THE DECISION OF THE BOARD WITH RESPECT TO THE COMPLAINT AGAINST THE CORPORATE RESPONDENT, THE BOARD HAD JURISDICTION TO HEAR THE COMPLAINT AGAINST THE RESPONDENT UNION. THIS WAS ON THE GROUNDS THAT THIS WAS A MATTER OF CIVIL RIGHTS SOLELY BETWEEN THE COMPLAINANT AND THE UNION UNDER SECTION 60 OF THE ONTARIO LABOUR RELATIONS ACT AND WAS SOMETHING ENTIRELY DIVORCED FROM AND UNRELATED TO THE NATURE OF THE CORPORATE RESPONDENT'S UNDERTAKING. AT THE HEARING, THE BOARD RESERVED ITS DECISION ON THIS SUBMISSION.

11. IN MURRAY GETTY V. THE CANADIAN PACIFIC RAILWAYS AND BROTHERHOOD RAILWAY CARMEN OF THE UNITED STATES AND CANADA, LOCAL 855 CASE (BOARD FILE NO. 1768-71-U, DATED APRIL 4, 1972), THE BOARD DEALT WITH A COMPLAINT SIMILAR TO THE PRESENT CASE. IN THE MURRAY GETTY CASE (SUPRA), THE LATTER HAD FILED A GRIEVANCE UNDER THE PROVISIONS OF THE COLLECTIVE AGREEMENT AGAINST HIS DISMISSAL FROM THE EMPLOYMENT. THE GRIEVOR WAS DISSATISFIED WITH THE MANNER WITH WHICH THE UNION RESOLVED THE GRIEVANCE AND ACCORDINGLY LAUNCHED THE COMPLAINT UNDER SECTION 79 OF THE ACT. THE BOARD DISMISSED THE COMPLAINT WITHOUT A HEARING UNDER SECTION 46 OF THE BOARD'S RULES OF PROCEDURE. IN DOING SO, THE BOARD STATED IN PARAGRAPH 3 OF ITS DECISION DATED APRIL 4, 1972 THAT:

"HAVING REGARD TO THE BRITISH NORTH AMERICA ACT
(1867) 30-31 VICT., c. 3 s. 92(10)(A) AND THE

CANADA LABOUR CODE, R.S.C. 1970 c. L.-1 s. 2(b), THE BOARD FINDS THAT IT IS WITHOUT JURISDICTION TO DEAL WITH THIS COMPLAINT. [SEE C.P.R. V. ATTORNEY GENERAL OF BRITISH COLUMBIA [1950] A.C. 122 (P.C.); THE QUEEN IN RIGHT OF ONTARIO V. THE BOARD OF TRANSPORT COMMISSIONERS [1968] 65 D.L.R. (2d) 425 (SCC)]."

12. THE BOARD HEREIN, RESPECTIVELY, CONCURS WITH THE DECISION IN THE MURRAY GETTY CASE (SUPRA) AND IN CONSEQUENCE FINDS THAT BOARD IS WITHOUT JURISDICTION TO DEAL WITH THE COMPLAINT AGAINST THE UNION RESPONDENT IN THE PRESENT CASE.

13. THE COMPLAINT WITH REFERENCE TO THE CORPORATE RESPONDENT AND WITH RESPECT TO THE UNION RESPONDENT HEREIN IS THEREFORE DISMISSED.

1826-72-U: MAX MORAZE (COMPLAINANT) V. FORD OF CANADA - MRS. AUDREY JOHNSON (RESPONDENT).

BEFORE: G. W. REED, Q.C., CHAIRMAN, AND BOARD MEMBERS E. BOYER AND A.J.F. ADE.

DECISION OF THE BOARD: APRIL 28, 1972.

1. THIS IS A COMPLAINT UNDER SECTION 79 OF THE LABOUR RELATIONS ACT IN WHICH THE COMPLAINANT, WHO IS ALSO THE GRIEVOR, ALLEGES THAT HE HAS BEEN DEALT WITH BY THE RESPONDENTS CONTRARY TO SECTION 60 OF THE LABOUR RELATIONS ACT. A FIELD OFFICER WAS APPOINTED, PURSUANT TO SECTION 79, AND HE HAS INTERVIEWED THE COMPLAINANT AND TAKEN HIS STATEMENT. THE BOARD NOW HAS BEFORE IT, THEREFORE, THE COMPLAINT, TOGETHER WITH A MORE DETAILED STATEMENT BY THE COMPLAINANT. IN HIS STATEMENT THE COMPLAINANT ASKS THAT THE RESPONDENT COMPANY RECALL HIM AND COMPENSATE HIM FOR LOSS OF INCOME AND OTHER FRINGE BENEFITS.

2. SECTION 60 OF THE ACT, WHICH IT IS ALLEGED THE RESPONDENTS HAVE CONTRAVENED, PROVIDES AS FOLLOWS:

60. A TRADE UNION OR COUNCIL OF TRADE UNIONS, SO LONG AS IT CONTINUES TO BE ENTITLED TO REPRESENT EMPLOYEES IN A BARGAINING UNIT, SHALL NOT ACT IN A MANNER THAT IS ARBITRARY, DISCRIMINATORY OR IN BAD FAITH IN THE REPRESENTATION OF ANY OF THE EMPLOYEES IN THE UNIT, WHETHER OR NOT MEMBERS OF THE TRADE UNION OR OF ANY CONSTITUENT UNION OF THE COUNCIL OF TRADE UNIONS, AS THE CASE MAY BE.

IT IS OBVIOUS FROM A READING OF THE SECTION THAT IT IS CONCERNED WITH THE DUTY OF A TRADE UNION OR A COUNCIL OF TRADE UNIONS TO ACT IN A MANNER THAT IS NOT ARBITRARY, DISCRIMINATORY OR IN BAD FAITH IN ITS REPRESENTATION OF EMPLOYEES IN A BARGAINING UNIT. THIS SECTION DOES NOT IMPOSE ANY DUTY ON AN EMPLOYER, IN THIS CASE THE FORD MOTOR COMPANY OF CANADA, OR ON A REPRESENTATIVE OF AN EMPLOYER, IN THIS CASE THE RESPONDENT MRS. AUDREY JOHNSON. IT FOLLOWS, THEREFORE, THAT THE COMPLAINANT IS NOT ENTITLED TO RELY ON SECTION 60 IN SUPPORT OF HIS COMPLAINT AGAINST THE RESPONDENT.

3. THE BOARD HAS POINTED OUT IN MANY CASES, SEE FOR EXAMPLE EAGLE PRECISION TOOL LIMITED CASE, OLRB M.R. JULY 1969, P. 551; AND NATIONAL SEA PRODUCTS LIMITED CASE, OLRB M.R. MAY 1961, P. 62, THAT SECTION 79 [FORMERLY SECTION 65] OF THE LABOUR RELATIONS ACT IS A PROCEDURAL SECTION AND THAT, BEFORE A GRIEVOR IS ENTITLED TO RELIEF UNDER SECTION 79, IT MUST BE SHOWN THAT A RESPONDENT HAS BEEN IN VIOLATION OF SOME SECTION OF THE LABOUR RELATIONS ACT, OTHER THAN SECTION 79. IN THIS CASE THE COMPLAINANT RELIED ON SECTION 60, WHICH WE HAVE FOUND DOES NOT APPLY TO THE COMPLAINT. A CAREFUL SCRUTINY OF BOTH THE COMPLAINT AND OF THE STATEMENT TAKEN BY THE FIELD OFFICER FAILS TO REVEAL THAT THE RESPONDENTS OR EITHER OF THEM ARE IN BREACH OF ANY OTHER SECTION OF THE LABOUR RELATIONS ACT. THUS, FOR EXAMPLE, THERE IS NOTHING TO INDICATE THAT THE LAY OFF OR SUSPENSION OF THE COMPLAINANT BY THE RESPONDENT COMPANY WAS IN ANY WAY CONTRARY TO SECTIONS 56, 58, 61, 63, 70 OR 71 OF THE LABOUR RELATIONS ACT. IN THESE CIRCUMSTANCES, WE ARE OF THE OPINION THAT THE COMPLAINT IN THIS CASE DOES NOT MAKE OUT A PRIMA FACIE CASE FOR THE REMEDY REQUESTED AND, PURSUANT TO SUBSECTION (1) OF SECTION 46 OF THE BOARD'S RULES OF PROCEDURE, THE COMPLAINT IS DISMISSED.

946-71-R: GENERAL TRUCK DRIVERS UNION, TEAMSTERS LOCAL UNION NO. 938 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. ERB TRANSPORT LIMITED (RESPONDENT).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND F. W. MURRAY.

APPEARANCES AT THE HEARING: I. J. THOMSON AND W. REILLY FOR THE APPLICANT, JAMES R. GUY AND VERNON D. ERB FOR THE RESPONDENT.

DECISION OF J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBER E. BOYER: APRIL 27, 1972.

1. THIS IS AN APPLICATION FOR CERTIFICATION. THE MAIN ISSUE BETWEEN THE PARTIES IS THAT THE RESPONDENT CLAIMS THAT THE PERSONS

WHOM THE APPLICANT SEEKS TO REPRESENT ARE NOT EMPLOYEES OF THE RESPONDENT BUT ARE INDEPENDENT CONTRACTORS.

2. THE FACTS OF THIS CASE ARE NOT IN DISPUTE. THE PARTIES SIGNED AN AGREED STATEMENT OF FACTS WHICH READS AS FOLLOWS:

1. THE RESPONDENT, ERB TRANSPORT LIMITED, IS A TRUCKING COMPANY WHICH HAS BEEN OPERATING FROM THE VILLAGE OF WELLESLEY FOR A NUMBER OF YEARS AND RECENTLY HAS ACQUIRED FACILITIES IN THE TOWN OF NEW HAMBURG BOTH IN THE COUNTY OF WATERLOO. IT OWNS A FLEET OF SOME TWENTY TRUCKS AND EMPLOYS DRIVERS TO DRIVE THESE TRUCKS.
2. IT HAS P.C.V. AUTHORITY TO TRANSPORT GOODS INTO AND OUT OF TORONTO AND MAINTAINS A DISPATCH OFFICE AND SMALL DEPOT YARD IN THAT CITY. THE RESPONDENT PURCHASED A PORTION OF THE P.C.V. LICENSING PRIVILEGES OF LEWIS TRANSPORT LIMITED ON THE 9TH DAY OF DECEMBER, 1970, INCLUDING A CLASS D LICENCE ALLOWING IT TO TRANSPORT FROZEN FOODS FOR CERTAIN NAMED SHIPPERS INCLUDING CANADA PACKERS LIMITED.
3. THE ONLY ASSETS PURCHASED FROM LEWIS TRANSPORT LIMITED WAS THE P.C.V. LICENCE AND ONE TRUCK AND THE SALE DID NOT INCLUDE THE PURCHASE OF ANY OTHER TRUCKS OR EQUIPMENT. SEVERAL MONTHS ELAPSED FROM THE DATE OF PURCHASE OF THE ABOVE NOTED TO THE DATE OF CLOSING WHICH FOLLOWED THE DECISION OF THE HIGHWAY TRANSPORT COMMISSION APPROVING THE TRANSFER OF THE LICENCE. JUST PRIOR TO THE DATE OF CLOSING THE RESPONDENT WAS TOLD BY A REPRESENTATIVE OF LEWIS TRANSPORT LIMITED THAT IT EMPLOYED THE SERVICES OF CERTAIN BROKER/DRIVERS WHO OWNED THEIR OWN VEHICLES. THE RESPONDENT THEN EMPLOYED THE SERVICES OF THESE INDEPENDENT CONTRACTORS UNDER AN ORAL AGREEMENT AND HAS CONTINUED TO SO EMPLOY THEM TO THE DATE HEREOF. SUBSEQUENT TO THE PURCHASE THE RESPONDENT SPENT CONSIDERABLE TIME DEVELOPING THE BUSINESS UNDER ITS NEW LICENSING PRIVILEGES AND HAS DISCUSSED THE TERMS OF AN AGREEMENT TO BE ENTERED INTO BETWEEN THE INDEPENDENT CONTRACTORS AND THE RESPONDENT WITH RESPECT TO THEIR SERVICES. IT IS THESE PERSONS WHO ARE REPRESENTED BY THE APPLICANT.
4. THE TRUCKS USED BY THE INDEPENDENT CONTRACTORS ARE ALL BENEFICIALLY OWNED BY THE INDEPENDENT CON-

TRACTORS AND ANY FINANCING OR LEASES ARE THEIR SOLE RESPONSIBILITY. THE TRUCKS ARE STRAIGHT TRUCKS WITH REFRIGERATION UNITS PAINTED IN THE SAME COLOUR AS OTHER ERB TRANSPORT LIMITED TRUCKS AND HAVE THE NAME ERB TRANSPORT LIMITED DISPLAYED ON THE SIDE THEREOF. THEY ARE REGISTERED IN THE NAME OF ERB TRANSPORT LIMITED WITH THE DEPARTMENT OF TRANSPORT FOR BOTH LICENCE PLATE AND P.C.V. PURPOSES. IT IS THE UNDERSTANDING OF THE RESPONDENT THAT THIS IS DONE SOLELY TO ALLOW THE INDEPENDENT CONTRACTORS TO OPERATE UNDER THE AFOREMENTIONED CLASS D LICENCE AND AT NO TIME AND IN NO MANNER IS ANY BENEFICIAL OWNERSHIP OF THE TRUCKS CLAIMED BY THE RESPONDENT. THE INDEPENDENT CONTRACTORS ARE NOT PRECLUDED FROM APPLYING FOR AND OBTAINING P.C.V. LICENCE PRIVILEGES TO CARRY GOODS FOR OTHER CUSTOMERS.

5. THE TRUCKS THEMSELVES ARE PARKED BY THE INDEPENDENT CONTRACTORS AT THEIR OWN EXPENSE AND AT LOCATIONS ARRANGED BY THE INDEPENDENT CONTRACTORS. THE RESPONDENT DOES NOT REQUIRE OR EVEN REQUEST THAT THE TRUCKS BE LEFT AT THE TORONTO DEPOT LEASED BY IT. BY CONTRAST THE EMPLOYEES OF THE RESPONDENT MUST PARK THEIR VEHICLES IN AREAS DESIGNATED BY THE RESPONDENT.
6. THE INDEPENDENT CONTRACTOR PAYS AND IS RESPONSIBLE FOR ALL FUEL, MAINTENANCE AND REPAIRS TO THE VEHICLE. THE RESPONDENT TAKES NO RESPONSIBILITY FOR PAYMENT OF ANY EXPENSES OF EITHER THE INDEPENDENT CONTRACTOR OR HIS VEHICLE EITHER OFF OR ON THE ROAD. SOME, BUT VERY LITTLE FUEL IS BOUGHT BY THE INDEPENDENT CONTRACTOR AT THE RESPONDENT'S TORONTO DEPOT WHICH IS THEN CHARGED AGAINST THE INDEPENDENT CONTRACTOR'S ACCOUNT. THE DRIVERS OF THE RESPONDENT'S TRUCKS ARE REIMBURSED FOR ALL EXPENSES OF LODGING, REPAIRS AND FUEL WHILE ON THE ROAD.
7. THE INDEPENDENT CONTRACTORS ARE DISPATCHED BY AN EMPLOYEE OF THE RESPONDENT, BERT SWAN, WHO MAINTAINS AN OFFICE AT HIS RESIDENCE IN THE CITY OF TORONTO. THE DISPATCHER IS RESPONSIBLE FOR FINDING VEHICLES TO CARRY THE GOODS OF THE CUSTOMERS AND IN SO DOING FIRST TELEPHONES THE INDEPENDENT CONTRACTORS TO SEE IF THEY ARE AVAILABLE. IF THE INDEPENDENT CONTRACTORS ARE AVAILABLE OR THEY HIRE AN ALTERNATE DRIVER FOR THEIR VEHICLE, THEY GO TO THE CUSTOMER'S LOCATION,

LOAD THE TRUCK AND DELIVER THE PRODUCT. IF NONE OF THE INDEPENDENT CONTRACTORS ARE AVAILABLE THE DISPATCHER WILL TRY TO EMPLOY THE SERVICES OF ANOTHER DRIVER AND TRUCK AND IF UNSUCCESSFUL WILL CALL THE RESPONDENT'S MAIN OFFICE AND A COMPANY OWNED TRUCK WILL BE MADE AVAILABLE. IN FACT THERE WOULD APPEAR TO BE SUFFICIENT BUSINESS TO KEEP THE INDEPENDENT CONTRACTORS FULLY EMPLOYED BY THE RESPONDENT AND IT HAS SELDOM BEEN NECESSARY TO EMPLOY THE SERVICES OF COMPANY OWNED TRUCKS.

8. UNDER NO CIRCUMSTANCES DOES THE RESPONDENT MAINTAIN ANY CONTROL OVER THE PERSONS HIRED IN SUBSTITUTION FOR THE INDEPENDENT CONTRACTOR. PAYMENT OF WAGES AND EXPENSES FOR ANY EMPLOYEE OF THE INDEPENDENT CONTRACTOR IS HIS SOLE RESPONSIBILITY. THE COMPANY HAS NOT CEASED TO EMPLOY THE SERVICES OF ANY INDEPENDENT CONTRACTOR WHO REFUSED FOR ANY REASON TO BE AVAILABLE FOR THE TRANSPORT OF CUSTOMER PRODUCTS OR REFUSED TO HIRE A SUBSTITUTED DRIVER, NOR HAS IT EVER FELT OR BELIEVED THAT IT HAS ANY RIGHT IN LAW OR OTHERWISE TO DEMAND THE SERVICES OF ANY OF THE INDEPENDENT CONTRACTORS OR THEIR VEHICLES. REFUSAL TO WORK ON THE PART OF THE RESPONDENT'S DRIVERS WOULD LEAD TO DISMISSAL OR OTHER DISCIPLINARY ACTION.
9. THE INDEPENDENT CONTRACTOR DELIVERS THE CUSTOMERS' GOODS ACCORDING TO THE DELIVERY SCHEDULE PREPARED BY THE CUSTOMER. HE AND HE ALONE IS RESPONSIBLE FOR ANY LOSS, DAMAGE OR SHORTAGE TO THE GOODS AND THE RESPONDENT MAINTAINS NO INSURANCE TO REIMBURSE THE CUSTOMER OR THE INDEPENDENT CONTRACTOR FOR ANY SUCH LOSSES. THE RESPONDENT'S DRIVERS ARE SAVED HARMLESS BY THE RESPONDENT FROM ANY CLAIM FOR SHORTAGES OR LOSSES.
10. THE INDEPENDENT CONTRACTOR PROVIDES HIS OWN UNIFORM AND IS NOT REIMBURSED THEREFOR BY THE RESPONDENT. THE RESPONDENT'S DRIVERS ARE REIMBURSED FOR UNIFORMS BY THE RESPONDENT.
11. THE INDEPENDENT CONTRACTOR IS NOT COVERED UNDER ANY UNEMPLOYMENT INSURANCE SCHEME BY THE RESPONDENT. PARTICIPATION IS SOLELY THE RESPONSIBILITY OF THE INDEPENDENT CONTRACTOR IF INDEED ANY SUCH SCHEME IS AVAILABLE TO HIM.

12. AS A RESULT OF THE PREVIOUS OWNER'S ARRANGEMENT WITH THE INDEPENDENT CONTRACTORS, WORKMEN'S COMPENSATION IS PAID BY THE RESPONDENT UNDER ITS GENERAL ASSESSMENT AND THIS ARRANGEMENT IS CURRENTLY IN THE PROCESS OF NEGOTIATIONS WITH THE INDEPENDENT CONTRACTORS.
13. GROUP MEDICAL INSURANCE IS PROVIDED THROUGH THE RESPONDENT'S GROUP FOR THE CONVENIENCE OF THE INDEPENDENT CONTRACTORS IN ORDER THAT THEY OBTAIN THE BENEFIT OF THE LOWER PREMIUM RATES. INSURANCE COVERAGE ON THE TRUCKS THEMSELVES IS ALSO PROVIDED THROUGH THE RESPONDENT'S FLEET COVERAGE. THIS IS ALSO DONE TO EFFECT A LOWER PREMIUM RATE FOR THE INDEPENDENT CONTRACTORS. BOTH OF THESE SCHEMES WERE INITIATED BY LEWIS TRANSPORT LIMITED AND MAINTAINED BY THE RESPONDENT UNTIL THE PRECISE TERMS OF THE AGREEMENT BETWEEN THE INDEPENDENT CONTRACTORS AND RESPONDENT CAN BE FINALIZED.
14. THE RESPONDENT RECEIVES THE TOTAL REMUNERATION FOR THE TRANSPORT OF THE CUSTOMERS' PRODUCT DIRECTLY FROM THE CUSTOMERS. IT THEN, AT THE INDEPENDENT CONTRACTOR'S REQUEST, PROVIDES THEM WITH A WEEKLY GROSS CHEQUE OF \$150.00 AND A FURTHER CHEQUE FOR THE BALANCE OF THE REMUNERATION OWING TO THEM. THE RESPONDENT CURRENTLY RETAINS 30% OF THE REMUNERATION RECEIVED FROM THE CUSTOMER TO REIMBURSE IT FOR THE USE OF ITS LICENSING PRIVILEGES, COSTS OF MAINTAINING ITS TORONTO DISPATCHER AND FOR THE GOODWILL INVOLVED WHICH MAKES IT POSSIBLE TO HAVE CUSTOMERS WHO REQUESTED THEIR SERVICES. FROM THE \$150.00 CHEQUE THE INDEPENDENT CONTRACTORS HAVE REQUESTED THAT DEDUCTIONS BE MADE UNDER THE INCOME TAX ACT IN THE SAME MANNER AS THOUGH IT WERE THEIR SALARY. FROM THE CHEQUE REPRESENTING THE BALANCE OF THEIR REMUNERATION WHICH IS CALCULATED ON THE PREVIOUS WEEK'S BUSINESS DONE BY THAT INDEPENDENT CONTRACTOR, NO DEDUCTIONS ARE MADE OTHER THAN FOR THE COST OF FUEL, IF ANY, PURCHASED FROM THE RESPONDENT'S DEPOT OR ANY OTHER EXPENSES WHICH MAY PROPERLY BE PAYABLE ON A CONTRA ACCOUNT BASIS. THE RESPONDENT'S OWN DRIVERS ARE PAID ON AN HOURLY OR MILEAGE BASIS DEPENDING ON THE RUN AND RECEIVE ONE CHEQUE SUBJECT TO THE USUAL DEDUCTION FOR EMPLOYEES.
15. THERE IS NO AGREEMENT REQUIRING THE INDEPENDENT CONTRACTORS TO DRIVE EXCLUSIVELY FOR THE RESPONDENT

AND THEY ARE THEREFORE FREE TO DRIVE FOR ANY OTHER CUSTOMER WHO MAY HIRE THEIR SERVICES. IF, OF COURSE, THE DRIVERS PERSISTED IN DRIVING FOR OTHER CUSTOMERS TO THE DETRIMENT OF THE RESPONDENT'S CUSTOMERS THE RESPONDENT WOULD REQUEST THAT THE P.C.V. LICENCE BE REMOVED FROM THE INDEPENDENT CONTRACTORS' TRUCKS. SIMILARLY THERE IS NO RESTRICTIVE COVENANT BETWEEN THE INDEPENDENT CONTRACTOR AND THE RESPONDENT PRECLUDING ANY COMPETITION BY THE INDEPENDENT CONTRACTORS WITH THE RESPONDENT. IF THEY WISH TO CEASE THEIR RELATIONSHIP WITH THE RESPONDENT THEY ARE FREE TO DO SO AND GO INTO DIRECT COMPETITION. SIMILARLY THE RESPONDENT MAINTAINS NO CONTROL OVER THE MANNER IN WHICH THE INDEPENDENT CONTRACTOR MAINTAINS OR DRIVES HIS VEHICLE.

3. HAVING REGARD TO THE AGREED FACTS AND THE REPRESENTATIONS OF THE PARTIES WITH RESPECT THERETO, WE FIND THAT ALTHOUGH THE DISPUTED PERSONS MAY BE THE BENEFICIAL OWNERS OF THE VEHICLES THEY ARE NOT THE REGISTERED OWNERS OF THE VEHICLES AND ARE NOT LICENSED TO CARRY ON BUSINESS AS PUBLIC COMMERCIAL VEHICLE OPERATORS. THE DISPUTED PERSONS HAVE A DUAL RELATIONSHIP WITH THE RESPONDENT. PART OF THIS RELATIONSHIP IS THAT OF A LESSOR OF THE TRUCKS AND TO THIS DEGREE IT MIGHT BE SAID THAT THEY ARE, AS LESSORS, INDEPENDENT CONTRACTORS. HOWEVER, APART FROM THEIR RELATIONSHIP AS A LESSOR THEY ALSO DRIVE THE TRUCKS AND WHILE THEY ARE DRIVING THE TRUCKS THEY ARE FUNCTIONING AS EMPLOYEES OF THE RESPONDENT. ALTHOUGH THE RESPONDENT MAY NOT EXERCISE THE AUTHORITY WHICH ANOTHER EMPLOYER MIGHT EXERCISE OVER HIS TRUCK DRIVERS, THE DISPUTED PERSONS ARE SUBJECT TO ANY CONTROL WHICH THE RESPONDENT CHOOSES TO EXERCISE. THERE IS NO AGREEMENT IN WRITING COVERING THE RELATIONSHIP BETWEEN THE RESPONDENT AND THE DISPUTED PERSONS. THE DISPUTED PERSONS WORK EXCLUSIVELY FOR THE RESPONDENT AND CANNOT HOLD THEMSELVES OUT TO THE PUBLIC AS PUBLIC COMMERCIAL VEHICLE OPERATORS. THEY CANNOT FIX RATES FOR THE GOODS THEY CARRY SINCE THESE RATES HAVE BEEN PREVIOUSLY FIXED BY THE RESPONDENT AND ALL GOODS ARE CARRIED FOR CUSTOMERS OF THE RESPONDENT. THE MANNER IN WHICH THE DISPUTED PERSONS ARE REMUNERATED FOR THEIR SERVICES IS OF LITTLE CONCERN TO THE BOARD. THE PERCENTAGE OF REVENUE THAT THEY RECEIVE CAN BE NEGOTIATED IN THE SAME WAY THAT WAGES OR OTHER FORMS OF REMUNERATION ARE NEGOTIATED.

4. IT SEEMS TO US THAT WHERE AN EMPLOYER HOLDS HIMSELF OUT TO THE PUBLIC AND TO THE LICENSING AUTHORITIES OF THE PROVINCE AS THE OWNER AND OPERATOR OF VEHICLES, THE EMPLOYER SHOULD NOT BE HEARD TO DENY, FOR THE PURPOSES OF LABOUR RELATIONS, THAT HE IS THE OWNER AND OPERATOR OF SUCH VEHICLES. BECAUSE OF THE LICENSING REQUIREMENTS OF THE PUBLIC COMMERCIAL VEHICLES ACT, THE STATEMENT THAT THE OWNER OPERATORS ARE "FREE TO DRIVE FOR ANY OTHER CUSTOMERS" (WHICH FREEDOM HAS YET

TO BE EXERCISED) IS VIRTUALLY MEANINGLESS. WE CANNOT ASSUME THAT THE OWNER OPERATOR WILL UNLAWFULLY ENGAGE IN BUSINESS AS A COMMON CARRIER IN ORDER TO FIND THAT HE IS TRULY INDEPENDENT OF THE RESPONDENT. ON THE CONTRARY, THE OWNER OPERATOR'S DEPENDENCE ON THE RESPONDENT AND THE RESPONDENT'S LICENCES IS ABUNDANTLY CLEAR FROM THE AGREED STATEMENT OF FACT.

5. THE BUSINESS ENGAGED IN BY THE OPERATORS OF THE VEHICLES WHEN THEY ARE DRIVING IS RELATED TO THE OPERATION OF THE RESPONDENT'S PUBLIC COMMERCIAL VEHICLE BUSINESS RATHER THAN THE LEASING ASPECT OF THE ARRANGEMENTS WITH THE RESPONDENT. THE DRIVING DUTIES OF AN OWNER OPERATOR ARE NOT THOSE OF A PERSON ACTING AS A COMMON CARRIER SINCE HE IS NOT LICENSED TO CARRY ON SUCH A BUSINESS. IT IS CLEAR THAT HE WORKS EXCLUSIVELY FOR THE RESPONDENT AND ALL SHIPMENTS ARE CARRIED FOR CUSTOMERS OF THE RESPONDENT. HIS DRIVING DUTIES ARE ACCORDINGLY PERFORMED FOR THE RESPONDENT AND HIS RELATIONSHIP IS WITH THE RESPONDENT. THERE IS NO THIRD PARTY INVOLVED IN THE DIRECT RELATIONSHIP BETWEEN THE OWNER OPERATOR AND THE RESPONDENT. THE RELATIONSHIP BETWEEN THE RESPONDENT'S CUSTOMERS WHOSE GOODS ARE BEING TRANSPORTED BY THE OWNER OPERATOR IS THE SAME AS THE RELATIONSHIP OF ANY OTHER DRIVER WHO MIGHT BE EMPLOYED BY THE RESPONDENT TO DRIVE ONE OF THE RESPONDENT'S TRUCKS. WHILE A GREAT DEGREE OF FREEDOM HAS BEEN GIVEN TO THE OWNER OPERATORS, THE RESPONDENT RETAINS EFFECTIVE CONTROL OF THE RESPONDENT'S BUSINESS AS A COMMON CARRIER AND THE FINANCIAL ARRANGEMENTS WITH THE OWNER OPERATORS ELIMINATE THE NECESSITY FOR THE RESPONDENT TO EXERCISE OTHER COMMON METHODS USED TO CONTROL THE ACTIVITIES OF EMPLOYEES. THE CONTROL EXERCISED OVER THE OWNER OPERATORS IS SIMILAR TO THE CONTROL WHICH IS INHERENT IN A PIECE-WORK PROGRAM.

6. THE BOARD THEREFORE FINDS, FOR THE REASONS SET OUT IN NICK'S HAULAGE LIMITED CASE, OLRB MONTHLY REPORT, NOVEMBER 1970, P. 871 AND P. 873; DEARIE & WARREN LIMITED CASE, OLRB MONTHLY REPORT, NOVEMBER 1970, P. 816; HAMILTON TRUCKING LIMITED CASE, [1971] OLRB REP. 237, AND THE CASES THEREIN REFERRED TO, THAT THE DISPUTED PERSONS ARE NOT INDEPENDENT CONTRACTORS BUT ARE EMPLOYEES OF THE RESPONDENT FOR THE PURPOSES OF THE ACT. IN ARRIVING AT OUR DECISION WE HAVE CONSIDERED THE DECISION OF THE CANADA LABOUR RELATIONS BOARD IN THE MILLAR & BROWN LTD. CASE DATED JANUARY 18, 1972 WHEREIN THE CANADA BOARD ARRIVED AT THE OPPOSITE CONCLUSION ON FACTS NOT DISSIMILAR TO THOSE SET OUT ABOVE. WE ARE UNABLE TO AGREE WITH THE CONCLUSIONS REACHED BY THE CANADA BOARD.

7. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(N) OF THE LABOUR RELATIONS ACT.

8. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT AND WORKING OUT OF METROPOLITAN TORONTO, SAVE AND EXCEPT

FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

9. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN SIXTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON SEPTEMBER 20, 1971, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 92(2)(J) OF THE LABOUR RELATIONS ACT TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

10. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

11. BOARD MEMBER F. W. MURRAY DOES NOT CONCUR IN THE ABOVE FINDINGS AND DISSENTS FROM THIS DECISION FOR REASONS TO BE GIVEN IN WRITING.

CASE LISTINGS APRIL 1972

	PAGE
1. CERTIFICATION	
(A) BARGAINING AGENTS CERTIFIED	83
(B) APPLICATIONS DISMISSED	95
(C) APPLICATION WITHDRAWN	98
2. APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS	98
3. APPLICATIONS FOR CONSENT TO PROSECUTE	99
4. COMPLAINTS UNDER SECTION 79 (FORMERLY S. 65) (UNFAIR LABOUR PRACTICE)	100
5. APPLICATIONS UNDER SECTION 39 (FORMERLY S. 35(A))	102
6. APPLICATIONS UNDER SECTION 55 (FORMERLY S. 47A)	103
7. JURISDICTIONAL DISPUTES	103
8. REFERENCE TO BOARD PURSUANT TO SECTION 96 (FORMERLY S. 79A)	103
9. APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION	103

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

DURING APRIL 1972

BARGAINING AGENTS CERTIFIED DURING APRIL

NO VOTE CONDUCTED

51-70-R: TEXTILE WORKERS UNION OF AMERICA, AFL-CIO-CLC (APPLICANT) v. FEDERAL PACKAGING AND PARTITION COMPANY LIMITED (RESPONDENT) v. FEDERAL PACKAGING EMPLOYEES ASSOCIATION (INTERVENER) v. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS PLANT IN AJAX, SAVE AND EXCEPT FOREMEN AND FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN AND FORELADY, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (74 EMPLOYEES IN THE UNIT).

(SEE DECISION [1972] OLRB REP. 316).

564-71-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) v. SUNRISE PAVING & CONSTRUCTION CO. LTD. (RESPONDENT) v. OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, LOCAL UNION 172 (INTERVENER).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN AND CONSTRUCTION LABOURERS ENGAGED IN BUILDING PROJECTS." (11 EMPLOYEES IN THE UNIT). (FOR THE PURPOSES OF CLARITY AND HAVING REGARD TO THE REPRESENTATIONS OF THE PARTIES THE BOARD DECLARES THAT THE ABOVE BARGAINING UNIT INCLUDES THE CLASSIFICATION OF FORM SETTER BUT DOES NOT INCLUDE THE CLASSIFICATION OF CEMENT FINISHER.).

(SEE DECISION [1972] OLRB REP. 313).

946-71-R: GENERAL TRUCK DRIVERS UNION, TEAMSTERS LOCAL UNION NO. 938 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) v. ERB TRANSPORT LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT AND WORKING OUT OF

METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (7 EMPLOYEES IN THE UNIT).

(SEE DECISION [1972] OLRB REP. 388).

1546-71-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL 2486 (APPLICANT) V. DESOURDY CONSTRUCTION LIMITED (RESPONDENT) V. EMPLOYEE (OBJECTOR).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT WITHIN A RADIUS OF THIRTY-FIVE MILES FROM THE CITY OF SUDBURY FEDERAL BUILDING, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

(SEE DECISION [1972] OLRB REP. 371).

1674-71-R: CANADIAN UNION OF GENERAL EMPLOYEES (APPLICANT) V. VERSA-SERVICES LIMITED DIVISION OF VERSAFOOD SERVICES LIMITED, CRESCENT SCHOOL, TORONTO (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT THE CRESCENT SCHOOL IN METROPOLITAN TORONTO, SAVE AND EXCEPT SUPERVISORS AND PERSONS ABOVE THE RANK OF SUPERVISOR." (3 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

1696-71-R: NURSES' ASSOCIATION REGIONAL NIAGARA HOMES FOR THE AGED (APPLICANT) V. REGIONAL MUNICIPALITY OF NIAGARA (RESPONDENT).

UNIT: "ALL REGISTERED AND GRADUATE NURSES EMPLOYED IN THE HOMES FOR THE AGED OF THE RESPONDENT, SAVE AND EXCEPT DIRECTORS OF NURSING AND SUPERVISORS OF HOMES, AND PERSONS ABOVE THOSE RANKS." (55 EMPLOYEES IN THE UNIT). (THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT THE ASSISTANTS TO THE DIRECTORS OF NURSING ARE EMPLOYEES OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT).

1702-71-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL 91 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. MASTERLOY PRODUCTS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN GLOUCESTER TOWNSHIP, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, PROFESSIONAL STAFF, TECHNICAL STAFF, LABORATORY TECHNICIANS, OFFICE AND SALES STAFF." (36 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

1721-71-R: THE LUMBER AND SAWMILL WORKERS' UNION, LOCAL 2995 OF THE

UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V.
LEVESQUE PLYWOOD LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS PLYWOOD AND PARTICLE BOARD OPERATIONS AT HEARST, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (313 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

1722-71-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. ACADIAN PLATERS COMPANY LIMITED (RESPONDENT).

- AND -

1731-71-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. ACADIAN BARREL FINISHING (DIVISION OF ACADIAN PLATERS COMPANY LIMITED) (RESPONDENT).

UNIT: "ALL EMPLOYEES OF ACADIAN PLATERS COMPANY LIMITED AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (27 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES). (FOR THE PURPOSE OF CLARITY, THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT ACADIAN BARREL FINISHING IS MERELY A DIVISION OF ACADIAN PLATERS COMPANY LIMITED AND THAT THE EMPLOYEES OF THAT DIVISION ARE PROPERLY INCLUDED IN A BARGAINING UNIT OF ALL EMPLOYEES OF ACADIAN PLATERS COMPANY LIMITED). (THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT THE PERSONS CLASSIFIED AS SHIPPER-RECEIVER AND QUALITY CONTROL SUPERVISOR ARE EXCLUDED FROM THE BARGAINING UNIT UNDER THE CLASSIFICATION OF FOREMEN).

1723-71-R: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) (APPLICANT) V. VIPOND AUTOMATIC SPRINKLER COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OUTSIDE INSTALLATION WORKERS AND OFFICE AND SALES STAFF." (16 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE APPLICANT AND THE RESPONDENT).

1725-71-R: SERVICE EMPLOYEES UNION, LOCAL 204 AFFILIATED WITH THE S.E.I.U. AF OF L., CIO, CLC (APPLICANT) V. EXTENDICARE (CANADA) LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN MISSISSAUGA, SAVE AND EXCEPT PROFESSIONAL NURSING STAFF, PHYSIOTHERAPISTS, OCCUPATIONAL THERAPISTS, SUPERVISORS, FOREMEN, PERSONS ABOVE THE RANK OF SUPERVISOR

AND FOREMAN, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (77 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

1732-71-R: CANADIAN FOOD AND ALLIED WORKERS, LOCAL UNION 175, CHARTERED AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (APPLICANT) V. M. LOEB (LONDON) LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS RETAIL STORES IN KINGSVILLE REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (20 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

1733-71-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (APPLICANT) V. NORTHDOWN SUPPLY EQUIPMENT LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT SUPERVISOR AND PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE STAFF, SALES STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (8 EMPLOYEES IN THE UNIT).

1744-71-R: INTERNATIONAL UNION OF DISTRICT 50, ALLIED AND TECHNICAL WORKERS OF THE UNITED STATES AND CANADA (APPLICANT) V. PIGMENT AND CHEMICAL COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT MILTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (17 EMPLOYEES IN THE UNIT).

1747-71-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. VAUGHAN METAL POLISHING LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (40 EMPLOYEES IN THE UNIT).

1748-71-R: INTERNATIONAL LADIES GARMENT WORKERS UNION (APPLICANT) V. BOUTIQUE BAGATELLE INC. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT SUMMERSTON, SAVE AND EXCEPT FOREMEN AND FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN AND FORELADY AND OFFICE STAFF." (68 EMPLOYEES IN THE UNIT).

1754-71-R: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) (APPLICANT) V. LLOYDAIRE (1969) LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN AND FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN AND FORELADY, OFFICE AND SALES STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (35 EMPLOYEES IN THE UNIT). (FOR THE PURPOSE OF CLARITY, THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT GUIDO MIGNONE IS NOT INCLUDED IN THE SAID BARGAINING UNIT.).

(SEE DECISION [1972] OLRB REP. 361).

1757-71-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) v. INDUSTRIAL & MINE INSTALLATIONS (QUEBEC) LIMITED, LES INSTALLATIONS INDUSTRIELLES ET MINIERES (QUEBEC) LIMITEE (RESPONDENT).

UNIT: "ALL MILLWRIGHTS AND MILLWRIGHTS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT WITHIN A FIFTY MILE RADIUS OF THE TIMMINS FEDERAL BUILDING, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (8 EMPLOYEES IN THE UNIT).

1761-71-R: TORONTO PRINTING PRESSMEN & ASSISTANTS' UNION LOCAL 10 (APPLICANT) v. ACO PRINTING COMPANY, DIVISION OF J-PAX LIMITED (RESPONDENT).

UNIT: "ALL PRESSMEN, ASSISTANT PRESSMEN, PREPARATORY WORKERS AND THEIR APPRENTICES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (5 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

1765-71-R: OFFICE & PROFESSIONAL EMPLOYEES INTERNATIONAL UNION LOCAL 165 (APPLICANT) v. C.I.P. NON WOVEN PRODUCTS DIVISION (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT HAWKESBURY, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE STAFF." (7 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

1770-71-R: CHATHAM CONSTRUCTION WORKERS ASSOCIATION, LOCAL NO. 53, AFFILIATED WITH THE CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) v. VAN MINNEN EXCAVATING (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE COUNTIES OF ESSEX AND KENT AND ALL EMPLOYEES OF THE RESPONDENT IN THE SAID AREA ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

1775-71-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, U.A.W. (APPLICANT) v. MGM BRAKES CANADA LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WINDSOR, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (65 EMPLOYEES IN THE UNIT).

1778-71-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 837 (APPLICANT) v. MOIR CONSTRUCTION COMPANY LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF NIAGARA AND THE COUNTY OF HALDIMAND, SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN AND CONSTRUCTION LABOURERS COVERED BY A COLLECTIVE AGREEMENT DATED JUNE 14, 1965 BETWEEN THE WELLAND CANAL TWINNING PROJECT CONTRACTORS' ASSOCIATION AND THE WELLAND CANAL CONSTRUCTION COUNCIL." (24 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

1786-71-R: LAUNDRY, DRY CLEANING & DYE HOUSE WORKERS' INTERNATIONAL UNION, LOCAL 351 (APPLICANT) v. BELLES CLEANERS AND LAUNDERERS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS PLANTS AND STORES IN THE BELLEVILLE QUINTE AREA, SAVE AND EXCEPT SUPERVISOR, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE SALES STAFF AND ROUTEMEN, STUDENTS EMPLOYED FOR THE SCHOOL VACATION PERIOD AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (31 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

1798-71-R: BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 183 AFFILIATED WITH S.E.I.U., A.F. OF L., C.I.O., C.L.C. (APPLICANT) v. EXTENDICARE (CANADA) LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT PETERBOROUGH, SAVE AND EXCEPT PROFESSIONAL NURSING STAFF, PHYSIOTHERAPISTS, OCCUPATIONAL THERAPISTS, SUPERVISORS, FOREMEN, PERSONS ABOVE THE RANK OF SUPERVISOR AND FOREMAN, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (24 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

1800-71-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527 (APPLICANT) v. JANITT INVESTMENTS LTD. (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN

THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

1807-72-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. BLISSETT & LEVERETTE FLOORING (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN THE INSTALLATION OF FLOORING IN THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (14 EMPLOYEES IN THE UNIT).

1808-72-R: LUMBER AND SAWMILL WORKERS' UNION, LOCAL 2995 OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. C. T. McDONALD FOREST PRODUCTS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN ITS SAWMILL AND PLANING MILL AT KENOGAMI, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE AND SALES STAFF." (42 EMPLOYEES IN THE UNIT).

1812-72-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (APPLICANT) V. GENERAL PLASTERING CO. LTD. (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT ENGAGED IN BUILDING PROJECTS IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (7 EMPLOYEES IN THE UNIT).

1813-72-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (APPLICANT) V. SPRING PLASTERING CO. LTD. (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT ENGAGED IN BUILDING PROJECTS IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (7 EMPLOYEES IN THE UNIT).

1815-72-R: SERVICE EMPLOYEES UNION, LOCAL 204 AFFILIATED WITH THE S.E.I.U., A.F. of L., CIO., CLC. (APPLICANT) V. MODERN BUILDING CLEANING, DIVISION OF DUSTBANE ENTERPRISES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT THE DOCTOR'S HOSPITAL, 45 BRUNSWICK AVENUE, TORONTO, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR AND OFFICE STAFF." (35 EMPLOYEES IN THE UNIT).

1822-72-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (APPLICANT) V. PARKWAY PLASTERING CO. (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT ENGAGED IN BUILDING PROJECTS IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ES-QUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

1823-72-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (APPLICANT) V. RELIABLE PLASTERING LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT ENGAGED IN BUILDING PROJECTS IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ES-QUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (9 EMPLOYEES IN THE UNIT).

1824-72-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (APPLICANT) V. SUBURBAN PLASTERING COMPANY LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT ENGAGED IN BUILDING PROJECTS IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ES-QUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (11 EMPLOYEES IN THE UNIT).

1829-72-R: CHRISTIAN TRADE UNIONS OF CANADA (LOCAL 6) (APPLICANT) V. HARM SCHILTHUIS AND SONS LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS, CARPENTERS' APPRENTICES AND CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF DUFFERIN INCLUDING THE TOWN OF ORANGEVILLE, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

1836-72-R: INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS (APPLICANT) V. BOSTITCH DIVISION OF TEXTRON CANADA LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (50 EMPLOYEES IN THE UNIT).

1855-72-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 1081 (APPLICANT) V. DOUG WRIGHT CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF BRANT AND NORFOLK, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

1869-72-R: THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL 628 (APPLICANT) V. LAKEHEAD DO-ALL PLUMBING AND HEATING (RESPONDENT).

UNIT: "ALL PLUMBERS AND PLUMBERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE DISTRICT OF THUNDER BAY, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

1874-72-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. KLEEN-WAY CONSTRUCTION LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTY OF WENTWORTH AND THE TOWNSHIP OF NASSAGAWEYA AND THE TOWN OF BURLINGTON IN THE COUNTY OF HALTON ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULL-DOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

APPLICATIONS CERTIFIED SUBSEQUENT TO PRE-HEARING VOTE

1749-71-R: OIL, CHEMICAL & ATOMIC WORKERS INTERNATIONAL UNION (APPLICANT) V. W. RALSTON & CO. (CANADA) LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT BRAMALEA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (77 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		66
NUMBER OF PERSONS WHO CAST BALLOTS	59	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	38	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	21	

1751-71-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) V. TEXTURON YARNS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT HAWKESBURY, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (57 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		52
NUMBER OF PERSONS WHO CAST BALLOTS	49	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	26	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	23	

APPLICATIONS CERTIFIED SUBSEQUENT TO POST-HEARING VOTE

1368-71-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. H. J. MCFARLAND CONSTRUCTION COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED IN ITS QUARRY OPERATION IN THE TOWNSHIP OF NEPEAN, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND CLERICAL STAFF, CHECKERS, WATCHMEN AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE NATIONAL CAPITAL ROADBUILDERS ASSOCIATION AND A COUNCIL OF TRADE UNION, DATED MARCH 9, 1970." (14 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST		13
NUMBER OF PERSONS WHO CAST BALLOTS	12	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	12	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	0	

1481-71-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. MUNICIPAL CORPORATION OF THE TOWN OF WALKERTON (RESPONDENT).

UNIT: "ALL OUTSIDE EMPLOYEES OF THE RESPONDENT, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND CLERICAL STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL PERIOD." (5 EMPLOYEES IN THE UNIT). (THE BOARD FURTHER STATED IN PARAGRAPH 4 OF ITS DECISION DATED MARCH 17TH, 1972: 4. "THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT THE OUTSIDE EMPLOYEES INCLUDE THOSE IN THE WORKS DEPARTMENT, WATER POLLUTION CONTROL DEPARTMENT, ARENA, CEMETERY AND PARKS DEPARTMENT.....").

NUMBER OF PERSONS ON REVISED VOTERS' LIST	10
NUMBER OF PERSONS WHO CAST BALLOTS	10
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	6
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	4

1515-71-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. ALGOMA MAINTENANCE & SERVICES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE DISTRICT OF KENORA, INCLUDING THE PATRICIA PORTION, AND THAT PART OF THE RESPONDENT'S PROJECT AT THE MATTA BI MINE SITE LOCATED IN THE DISTRICT OF THUNDER BAY, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (13 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	12
NUMBER OF PERSONS WHO CAST BALLOTS	10
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	10
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	0

1520-71-R: LUMBER AND SAWMILL WORKERS UNION, LOCAL 2693, OF THE UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA (APPLICANT) V. ALGOMA MAINTENANCE & SERVICES LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE DISTRICT OF KENORA, INCLUDING THE PATRICIA PORTION, AND THAT PART OF THE RESPONDENT'S PROJECT AT THE MATTABI MINE SITE LOCATED IN THE DISTRICT OF THUNDER BAY, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (33 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	25
NUMBER OF PERSONS WHO CAST BALLOTS	20
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	15
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	5

1560-71-R: LONDON & DISTRICT BUILDING SERVICE WORKERS' UNION, LOCAL 220, S.E.I.U., A.F. of L., C.I.O., C.L.C. (APPLICANT) V. BOBBIER CON-VALESCENT HOME (RESPONDENT) V. EMPLOYEE (OBJECTOR).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT DUTTON REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, SAVE AND EXCEPT FOREMEN AND SUPERVISORS, PERSONS ABOVE THE RANK OF FOREMAN AND SUPERVISOR, REGISTERED AND GRADUATE NURSES, OFFICE STAFF, AND PHYSIOTHERAPISTS AND OCCUPATIONAL THERAPISTS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (8 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS'	
LIST	8
NUMBER OF PERSONS WHO CAST BALLOTS	8
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	6
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	2

1561-71-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION AFL:CIO:CLC (APPLICANT) V. MAC'S MILK LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT ITS WAREHOUSE DIVISION AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (25 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS'		
LIST		25
NUMBER OF PERSONS WHO CAST BALLOTS	23	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	18	
NUMBER OF BALLOTS MARKED AGAINST		
APPLICANT	5	

1693-71-R: TEAMSTERS LOCAL UNION No. 879 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. DELTA READY-MIX LIMITED (RESPONDENT) V. INTERNATIONAL UNION OF DISTRICT 50, ALLIED AND TECHNICAL WORKERS OF THE UNITED STATES AND CANADA (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN HAMILTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE STAFF." (13 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS'		
LIST		10
NUMBER OF PERSONS WHO CAST BALLOTS	10	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	8	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF INTERVENER	2	

APPLICATIONS FOR CERTIFICATION DISMISSED DURING APRIL

No Vote Conducted

1452-71-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 837 (APPLICANT) V. TRI-SPAN CONSTRUCTION LTD. (RESPONDENT). (18 EMPLOYEES).

1548-71-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 1036 (APPLICANT) V. THE CORPORATION OF THE TOWN OF BLIND RIVER (RESPONDENT). (2 EMPLOYEES).

1646-71-R: WOOD, WIRE, AND METAL LATHERS' INTERNATIONAL UNION, LOCAL 545, KINGSTON, ONTARIO (APPLICANT) V. PEL DRYWALL SYSTEMS LIMITED (RESPONDENT) V. UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL 249 KINGSTON, ONT. (INTERVENER). (2 EMPLOYEES).

1753-71-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 93 (APPLICANT) V. ANTAMEX LIMITED (RESPONDENT). (2 EMPLOYEES).

1774-71-R: HOTELS, CLUBS, RESTAURANTS, TAVERNS EMPLOYEES' UNION LOCAL 261 (APPLICANT) V. THE MILL DINING LOUNGE (RESPONDENT). (47 EMPLOYEES).

1802-71-R: CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) V. THE HYDRO ELECTRIC POWER COMMISSION OF ONTARIO (RESPONDENT) V. CANADIAN UNION OF PUBLIC EMPLOYEES, C.L.C. ONTARIO HYDRO EMPLOYEES' UNION LOCAL 1000 (INTERVENER). (391 EMPLOYEES).

1821-72-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS UNION, LOCAL 786 (APPLICANT) V. FRANKEL STRUCTURAL STEEL LIMITED (RESPONDENT). (2 EMPLOYEES).

1885-72-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 93 (APPLICANT) V. METRO WOODCRAFT LTD. (RESPONDENT). (7 EMPLOYEES).

CERTIFICATION DISMISSED SUBSEQUENT TO PRE-HEARING VOTE

1679-71-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) V. WERLICH INDUSTRIES LIMITED (RESPONDENT).

VOTING CONSTITUENCY: "ALL EMPLOYEES OF THE RESPONDENT AT STRATFORD, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (66 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	63
NUMBER OF PERSONS WHO CAST BALLOTS	41
NUMBER OF BALLOTS EXCLUDING SEGREGATED BALLOTS CAST BY PERSONS WHOSE NAMES APPEAR ON VOTERS' LIST	38
NUMBER OF SEGREGATED BALLOTS CAST BY PERSONS WHOSE NAMES APPEAR ON VOTERS' LIST	3

BALLOT BOX SEALED

1687-71-R: AMALGAMATED CLOTHING WORKERS OF AMERICA (APPLICANT) V. MR. SLAX OF CORNWALL LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT CORNWALL, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN AND FORELADY, TRUCK DRIVERS, DESIGNERS, OFFICE AND SALES STAFF." (62 EMPLOYEES IN THE UNIT). (THE BOARD FURTHER DIRECTED IN ITS DECISION DATED MARCH 21ST, 1972: "..... THAT TRUCK DRIVERS ARE NOT INCLUDED IN THE VOTING CONSTITUENCY.").

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST		63
NUMBER OF PERSONS WHO CAST BALLOTS	54	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	5	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	49	

CERTIFICATION DISMISSED SUBSEQUENT TO POST-HEARING VOTE

1353-71-R: UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA AFL CIO CLC (APPLICANT) V. AVP EXTRUSIONS LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT NEWCASTLE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (20 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST		15
NUMBER OF PERSONS WHO CAST BALLOTS	15	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	5	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	10	

1611-7 -R: HOTEL AND RESTAURANT EMPLOYEES' AND BARTENDERS' INTERNATIONAL UNION, LOCAL 261 (APPLICANT) V. VERSAFOOD SERVICES LIMITED, FOOD MANAGEMENT SERVICE (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT #1: "ALL EMPLOYEES OF THE RESPONDENT AT 73 RIDEAU STREET IN OTTAWA, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, CHEF, HOSTESS, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (28 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		32
NUMBER OF PERSONS WHO CAST BALLOTS	28	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	4	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	24	

UNIT #2: "ALL EMPLOYEES OF THE RESPONDENT AT 73 RIDEAU STREET IN OTTAWA REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, CHEF, HOSTESS, AND OFFICE STAFF." (14 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST		17
NUMBER OF PERSONS WHO CAST BALLOTS	14	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	4	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	10	

APPLICATION FOR CERTIFICATION WITHDRAWN DURING APRIL

1835-72-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. TRUCK & TRACTOR EQUIPMENT LTD. (RESPONDENT). (13 EMPLOYEES).

APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS DISPOSED OF DURING APRIL

584-71-R: MELDRUM R. GAREAU AND EARL H. DICKSON (APPLICANTS) V. THE REPRESENTATIVES' AND TECHNICAL STAFF UNION (RESPONDENT). (14 EMPLOYEES). (DISMISSED).

1527-71-R: TOM RIGBY, GORDON CROCKFORD, INGRID MICHAELIS, BETTY MC-LAREN, ON BEHALF OF A GROUP OF EMPLOYEES OF WELWYN CANADA LIMITED (APPLICANTS) V. LOCAL UNION 120 OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS AFL-CIO-CLC (RESPONDENT) V. WELWYN CANADA LIMITED (INTERVENER). (GRANTED).

UNIT: "ALL EMPLOYEES OF WELWYN CANADA LIMITED AT ITS LONDON, ONTARIO PLANT, SAVE AND EXCEPT OFFICE STAFF, ENGINEERS, SUPERVISORS AND THOSE ABOVE THE RANK OF SUPERVISOR." (78 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		79
NUMBER OF PERSONS WHO CAST BALLOTS	74	
BALLOTS SEGREGATED AND NOT COUNTED	1	
NUMBER OF BALLOTS MARKED IN FAVOUR OF RESPONDENT	9	
NUMBER OF BALLOTS MARKED AGAINST RESPONDENT	64	

1538-71-R: LUCIEN MIRON, ON BEHALF OF THE LABOURERS IN THE EMPLOY OF SINCLAIR SUPPLY CO. LTD. (CONSTRUCTION DIVISION), AND LUCIEN MIRON PERSONALLY (APPLICANT) V. LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL 527 (RESPONDENT) V. SINCLAIR SUPPLY CO. LTD. (CONSTRUCTION DIVISION) (INTERVENER). (GRANTED).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF SINCLAIR SUPPLY CO. LTD. (CONSTRUCTION DIVISION) IN THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (7 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	7
NUMBER OF PERSONS WHO CAST BALLOTS	7
NUMBER OF BALLOTS MARKED IN FAVOUR OF RESPONDENT	1
NUMBER OF BALLOTS MARKED AGAINST RESPONDENT	6

1644-71-R: (MRS.) LAURA GOULD (APPLICANT) V. SUDBURY TYPOGRAPHICAL UNION No. 846 (RESPONDENT). (13 EMPLOYEES). (GRANTED).

1658-71-R: CLAIRE DUBEAU (APPLICANT) V. CANADIAN UNION OF GENERAL EMPLOYEES (RESPONDENT) V. TEKPAK AUTOMATED SYSTEMS LIMITED (INTERVENER). (4 EMPLOYEES). (DISMISSED).

(SEE DECISION [1972] OLRB REP. 376).

1659-71-R: JOHN KACHMAR (APPLICANT) V. LOCAL 197 HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION AFL CIO CLC (RESPONDENT). (11 EMPLOYEES). (GRANTED).

APPLICATIONS FOR CONSENT TO PROSECUTE DISPOSED OF DURING APRIL

1386-71-U: THE CARPENTERS' DISTRICT COUNCIL OF TORONTO AND VICINITY, ON BEHALF OF LOCAL UNION NOS. 27; 666; 681; 1133; 1747; 1963; 3227 AND 3233 OF THE UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA AND JACK CLINTON AND ANDY CLIFFORD (APPLICANTS) V. WOOD, WIRE & METAL LATHERS' INTERNATIONAL UNION LOCAL 562, KENNETH WELLER & GUS SIMONE (RESPONDENTS). (GRANTED).

1517-71-U: THE GENERAL CONTRACTORS' SECTION OF THE TORONTO CONSTRUCTION ASSOCIATION (APPLICANT) V. INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL 721 AND SHERATON CONSTRUCTION LIMITED (RESPONDENTS). (WITHDRAWN).

1664-71-U: SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 204 (APPLICANT) V. CONSOLIDATED MAINTENANCE SERVICES LIMITED, PETER ITTIG AND JOHN MCINTYRE (RESPONDENTS). (WITHDRAWN).

1700-71-U: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. GIDON INDUSTRIES LIMITED (RESPONDENT). (GRANTED).

COMPLAINTS UNDER SECTION 79 (FORMERLY S. 65) (UNFAIR LABOUR PRACTICE)DISPOSED OF DURING APRIL

1250-71-U: INTERNATIONAL WOODWORKERS OF AMERICA (COMPLAINANT) V. EMPIRE BENTWOOD INDUSTRIES LIMITED (RESPONDENT). (DISMISSED).

(SEE DECISION [1972] OLRB REP. 362).

1317-71-U: PERCY WOODS (COMPLAINANT) V. NAPANEE INDUSTRIES (RESPONDENT). (DISMISSED).

(SEE DECISION [1972] OLRB REP. 356).

1351-71-U: WILLIAM CAMPBELL (COMPLAINANT) V. INTER-CITY TRUCK LINES LIMITED, AND TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, LOCAL UNION 880 (RESPONDENTS). (DISMISSED).

(SEE DECISION [1972] OLRB REP. 385).

1406-71-U: DENNIS H. O'KEEFE LEDGER NO. 64300 TEAMSTERS CHAUFFEURS WAREHOUSE & HELPERS LOCAL UNION 880 WINDSOR ONT. (COMPLAINANT) V. TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS UNION, LOCAL 880, WILFRED P. MAY, PRESIDENT, RYANCRETE-STERLING PRODUCTS, WINDSOR, ONTARIO, A DIVISION OF LAKE ONTARIO CEMENT LIMITED, TORONTO, ONTARIO (RESPONDENTS). (DISMISSED).

(SEE DECISION [1972] OLRB REP. 298).

1415-71-U: CANADIAN UNION OF PUBLIC EMPLOYEES (COMPLAINANT) V. CORPORATION OF THE TOWN OF THOROLD (RESPONDENT). (DISMISSED).

(SEE DECISION [1972] OLRB REP. 383).

1416-71-U: INTERNATIONAL BROTHERHOOD OF BOOKBINDERS, LOCAL 28 (COMPLAINANT) V. BROOKER TRADE BINDERY LTD. (RESPONDENT). (WITHDRAWN).

1479-71-U: THOMAS J. BERRY (COMPLAINANT) V. CIVIL SERVICE OF ONTARIO, INC. (RESPONDENT). (DISMISSED).

(SEE DECISION [1972] OLRB REP. 350).

1564-71-U: CANADIAN UNION OF PUBLIC EMPLOYEES (COMPLAINANT) V. THE WELLAND COUNTY ROMAN CATHOLIC SEPARATE SCHOOL BOARD (RESPONDENT). (DISMISSED).

1607-71-U: SERVICE EMPLOYEES UNION, LOCAL 532 (COMPLAINANT) V. ST. ELIZABETH NURSING HOME (RESPONDENT).

- AND -

1631-71-U: SERVICE EMPLOYEES UNION, LOCAL 532 (COMPLAINANT) V. ST. ELIZABETH NURSING HOME (RESPONDENT). (GRANTED).

(SEE DECISION [1972] OLRB REP. 378).

1622-71-U: CANADIAN UNION OF OPERATING ENGINEERS - LOCAL 101 (COMPLAINANT) V. 400 UNIVERSITY AVENUE PROSPECT COMPANY (RESPONDENT). (DISMISSED).

(SEE DECISION [1972] OLRB REP. 373).

1626-71-U: CANADIAN FOOD AND ALLIED WORKERS LOCAL UNION 175, CHARTERED BY THE AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (COMPLAINANT) V. INTERCITY FOOD SERVICES LTD. (RESPONDENT). (WITHDRAWN).

1651-71-U: CANADIAN FOOD AND ALLIED WORKERS LOCAL UNION 175, CHARTERED BY THE AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (COMPLAINANT) V. INTERCITY FOOD SERVICES INC. (RESPONDENT). (WITHDRAWN).

1657-71-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V. SHERMAN SUPERSONIC INDUSTRIES (CANADA) LIMITED (RESPONDENT). (WITHDRAWN).

1665-71-U: SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 204 (COMPLAINANT) V. CONSOLIDATED MAINTENANCE SERVICES LIMITED (RESPONDENT). (WITHDRAWN).

1724-71-U: CANADIAN FOOD AND ALLIED WORKERS LOCAL UNION 175, CHARTERED BY THE AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (COMPLAINANT) V. BELMONT MEAT PRODUCTS LTD. (RESPONDENT). (WITHDRAWN).

1768-71-U: MURRAY GETTY (COMPLAINANT) V. THE CANADIAN PACIFIC RAILWAYS AND BROTHERHOOD RAILWAY CARMEN OF THE UNITED STATES AND CANADA, LOCAL 855 (RESPONDENTS). (DISMISSED).

(SEE DECISION [1972] OLRB REP. 287).

1771-71-U: OFFICE & PROFESSIONAL EMPLOYEES INTERNATIONAL UNION (COMPLAINANT) V. DOMINION GLASS COMPANY LTD. (RESPONDENT). (WITHDRAWN).

1820-72-U: MR. ANTONIO FABRIZIO, 86 PORTLAND STREET, TORONTO 18, ONTARIO (COMPLAINANT) V. RUUD LIMITED, (DIVISION OF RHEEM CANADA LIMITED) (RESPONDENT). (WITHDRAWN).

1826-72-U: MAX MORAZE (COMPLAINANT) V. FORD OF CANADA - MRS. AUDREY JOHNSON (RESPONDENT). (DISMISSED).

(SEE DECISION [1972] OLRB REP. 387).

1827-72-U: JAMES TOBIN (COMPLAINANT) V. JOHNSON CONTROLS LTD., 120 BERMONDSEY RD., TOM PATTERSON, AND UNION: I.B.E.W. LOCAL 1966 (RESPONDENTS). (WITHDRAWN).

APPLICATIONS UNDER SECTION 39 (FORMERLY S. 35(A)) DISPOSED OF DURING

APRIL

147-70-M: DIRK VAN DYK (APPLICANT) V. LONDON AND DISTRICT BUILDING SERVICE WORKERS' UNION, LOCAL 220, S.E.I.U.-A.F.L.-C.I.O.-C.L.C. (RESPONDENT TRADE UNION) V. THE NORFOLK HOSPITAL ASSOCIATION (RESPONDENT EMPLOYER). (GRANTED).

923-71-M: JAN HENDRIK STROOMENBERGH (APPLICANT) V. OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION, LOCAL 9-14, (POLYMER UNIT) (RESPONDENT TRADE UNION) V. POLYMER CORPORATION LIMITED (RESPONDENT EMPLOYER). (GRANTED).

1282-71-M: PETER VAN DUYVENVOORDE (APPLICANT) V. SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, LOCAL UNION 540 (RESPONDENT TRADE UNION) V. MOYER DIEBEL LIMITED (RESPONDENT EMPLOYER). (GRANTED).

1314-71-M: APPI SIKKEMA (APPLICANT) V. CANADIAN UNION OF PUBLIC EMPLOYEES LOCAL 1217 (RESPONDENT TRADE UNION) V. COLLINGWOOD PUBLIC UTILITIES COMMISSION (RESPONDENT EMPLOYER). (GRANTED).

(SEE DECISION [1972] OLRB REP. 289).

1421-71-M: RITA HORNEMAN (MRS.) (APPLICANT) V. SERVICE EMPLOYEES' UNION, LOCAL 210 (RESPONDENT TRADE UNION) V. PUBLIC GENERAL HOSPITAL SOCIETY OF CHATHAM (RESPONDENT EMPLOYER). (GRANTED).

1425-71-M: CATHERINE GRACE HORNEMAN (MISS) (APPLICANT) V. SERVICE EMPLOYEES' UNION, LOCAL 210 (RESPONDENT TRADE UNION) V. PUBLIC GENERAL HOSPITAL SOCIETY OF CHATHAM (RESPONDENT EMPLOYER). (DISMISSED).

(SEE DECISION [1972] OLRB REP. 369).

1470-71-M: DAVID CAMPBELL (APPLICANT) V. SERVICE EMPLOYEES UNION, LOCAL 204, AFL-CIO-CLC (RESPONDENT TRADE UNION) V. TULLAMORE NURSING HOME (RESPONDENT EMPLOYER). (GRANTED).

APPLICATIONS UNDER SECTION 55 (FORMERLY S. 47A) DISPOSED OF DURINGAPRIL

1492-71-R: LOCAL UNION 1940 OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA AND GRAND RIVER VALLEY DISTRICT COUNCIL OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA ON BEHALF OF LOCAL UNIONS 498, 949, 1940 AND 2173 (APPLICANTS) V. DIETRICH & KOEHLER CONSTRUCTION LTD., AND D-K CONSTRUCTION LIMITED (RESPONDENTS). (WITHDRAWN).

1493-71-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 1081 (APPLICANT) V. DIETRICH & KOEHLER CONSTRUCTION LTD., AND D-K CONSTRUCTION LIMITED (RESPONDENTS). (WITHDRAWN).

JURISDICTIONAL DISPUTES

1404-71-JD: ABE DICK MASONRY LIMITED (COMPLAINANT) V. 1) TRICON CONSTRUCTION CORPORATION; 2) LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 837; 3) UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 18 (RESPONDENTS). (DISMISSED).

1668-71-JD: TORONTO TYPOGRAPHICAL UNION No. 91, I.T.U. (COMPLAINANT) V. SOUTHAM-MURRAY, A DIVISION OF SOUTHAM PRINTING COMPANY LIMITED AND TORONTO PHOTO ENGRAVERS UNION, LOCAL 35, P.L.P.I.U. (RESPONDENTS).

(SEE DECISION [1972] OLRB REP. 348).

REFERENCE TO BOARD PURSUANT TO SECTION 96 (FORMERLY S. 79A)

1729-71-M: UNITED PLANT GUARD WORKERS OF AMERICA, LOCAL 1962 (TRADE UNION) V. DOUGLAS AIRCRAFT COMPANY OF CANADA LIMITED (EMPLOYER).

APPLICATION FOR RECONSIDERATION OF BOARD'S DECISION - CERTIFICATION

1374-71-R: INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796 (APPLICANT) V. MARBON DIVISION, BORG-WARNER (CANADA) LIMITED (RESPONDENT) V. EMPLOYEE (OBJECTOR). (REQUEST DENIED).

(SEE DECISION [1972] OLRB REP. 360).

APPLICATION FOR RECONSIDERATION OF BOARD'S DECISION - SECTION 39

(FORMERLY S. 35A)

924-71-M: THEODORE HOGETERP (APPLICANT) V. INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW), LOCAL 222 (RESPONDENT TRADE UNION) V. GENERAL MOTORS OF CANADA LIMITED (RESPONDENT EMPLOYER). (REQUEST DENIED).

(SEE DECISION [1972] OLRB REP. 348).

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909
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CASES REPORTED

ADENA FORMING LTD., CARRYING ON BUSINESS UNDER THE NAME OF 228095 INVESTMENTS LTD. RE L. 1190 C.J.A. AND CANADIAN UNION OF CONSTRUCTION WORKERS AND L.I.U. L. 183.....	471
AJAX & PICKERING GENERAL HOSPITAL RE WAREHOUSEMEN & MISCEL- LANEOUS DRIVERS U., L. 419 AFFILIATED WITH T.C.W.H. AND C.U.P.E. AND NURSES' ASSOCIATION AJAX & PICKERING GENERAL HOSPITAL.....	477
ASSOCIATED FREEZERS OF CANADA LTD. AND WAREHOUSEMEN & MIS- CELLANEOUS DRIVERS L. 419, AFFILIATED WITH T.C.W.H. AND ASSOCIATED FREEZERS OF CANADA LTD. AND GUY BERNIER, RONALD KOWK, AL MORRIS, STANLEY PERRY, CLIFFORD STACEY AND RALPH STRINGER.....	445
AUTOMATIC FUELS LTD., DEPENDABLE SERVICE, RE L.U. 46 P.P.F.....	515
BAYSIDE INDUSTRIES LTD. RE C.L.A.C. AND MILLWRIGHTS' L. 2309, C.J.A.....	557
CANADIAN WESTINGHOUSE CO. LTD. RE GEORGE DYKHUIS RE U.E. L. 546.....	395
CHAMPLAIN FOREST PRODUCTS LTD. RE P.S.P.M.W. AND GROUP OF EMPLOYEES.....	399
CIVIL SERVICE OF ONTARIO, INC. RE THOMAS J. BERRY.....	520
DOCTORS, THE, HOSPITAL RE C.U.P.E. AND I.U.O.E. L. 796.....	401
DOVER CORPORATION (CANADA) LTD. TURNBULL ELEVATOR DIVISION AND JOHN RICHARD BURFIELD, RICHARD HERBERT YAKELEY INT'L UNION OF ELEVATOR CONSTRUCTORS, L. 50.....	435
DOVER CORPORATION (CANADA) LTD., TURNBULL ELEVATOR DIVISION RE I.U.E.C., L. 50.....	540
EXTENDICARE (CANADA) LTD. RE LONDON & DISTRICT BUILDING SERVICE WORKERS' U., L. 220, S.E.I.U., A.F. OF L., C.I.O., C.L.C.....	441
FEDERAL PACKAGING & PARTITION CO. LTD. RE T.W.U.A., AFL-CIO- CLC AND FEDERAL PACKAGING EMPLOYEES ASSOCIATION AND GROUP OF EMPLOYEES.....	483

FITZPATRICK, J. G., CONSTRUCTION LTD. RE C.J.A. L.U. 249 KINGSTON ONTARIO.....	485
FRANCON DIVISION OF CANFARGE LTD. AND L. 93 C.J.A. AND L. 527 L.I.U. AND LOUIS DONOLO INC.....	510
GENERAL CONCRETE LTD. AND B.S.O.I.W., L. 700 AND L.I.U., L. 506 AND 625.....	418
GRANNY'S COUNTRY-OVEN BAKERY LTD. RE MILK & BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS & ALLIED EMPLOYEES L. U. #647, AFFILIATED T.C.W.H. AND GROUP OF EMPLOYEES.....	511
GREATER NIAGARA GENERAL HOSPITAL, THE, RE CSAO NATIONAL (INC.) AND I.U.O.E. L. 772.....	544
HOME BREAD BAKERY, A DIVISION OF CANADIAN FOOD PRODUCTS SALES LTD. RE MILK & BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS & ALLIED EMPLOYEES, L. 647 AFFILIATED WITH T.C.W.H.....	537
K. M. W. PRODUCTS LTD. RE U.S.A. AND GROUP OF EMPLOYEES.....	406
LIVINGSTON TRANSPORTATION LTD. RE I.W.A.....	488
MACEachern, GORDON A., LTD., 21 McCaul St., Tor. 133, Ont. RE SERVICE EMPLOYEES U. L. 268 AFFILIATED WITH S.E.I.U. AF OF L., C.I.O., & C.L.C.....	404
MASSEY FERGUSON, ESQUIRE, OF THE MUNICIPALITY OF METROPOLITAN TORONTO, IN THE COUNTY OF YORK RE I. K. TAMIMI, ESQUIRE OF THE TOWNSHIP OF BRAMPTON, IN THE COUNTY OF PEEL.....	524
MENARD BROTHERS LTD. RE B.M.P., L. 13.....	460
MERCHANTS SPEEDY DELIVERY LTD. RE C.L.A.C. AND T.C.W.H. L. 880 AFFILIATED WITH T.C.W.H.....	397
NELSON, G. M. WELDING AND B.S.O.I.W., L. 786.....	481
NORTHDOWN DRYWALL & CONSTRUCTION LTD. RE L. 97, W.W.M.L. AND L. 562 W.W.M.L. RE L. 97 W.W.M.L.....	428
NORTH SIMCOE ELECTRICAL CONTRACTING LTD. RE C.L.A.C. AND I.B.E.W. L. 1687.....	411
O.C.A.W. & ITS L. 9-698 RE LORRAINE DENNING.....	521

QUIGLEY CONSTRUCTION Co. LTD. AND I.U.O.E. L. 793.....	526
SERVANT, DONALD, ELECTRIC LTD. RE I.B.E.W. L. 586.....	409
SEVEN-UP (ONTARIO) LTD. RE ANTHONY PITOSCIA AND SEVEN-UP (ONTARIO) LTD. RE ANTHONY PITOSCIA.....	551
STEINBERG'S LTD. OTHERWISE KNOWN AS MIRACLE FOOD MART AND AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA RE BRIAN F. O'DONNELL.....	423
SUBURBAN METAL INDUSTRIES LTD. RE S.M.W. L. 540 AND GROUP OF EMPLOYEES.....	398
SUN PARLOUR GREENHOUSE GROWERS' Co-OPERATIVE LTD., ARMSTRONG PRODUCE Co. LTD., A.M.C. PRODUCE SHIPPERS INCORPORATED, MASTRONARDI PRODUCE LTD., GARDEN ACRE SALES, AN AGENCY OF ONTARIO GREENHOUSE PRODUCERS MARKETING BOARD RE RETAIL & FOOD EMPLOYEES L.U. 175, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC.....	512
SUNNYBROOK FOOD MARKET (KEELE) LTD. RE R.C.I.A. AND L. 206, N.C.C.L. AND GROUP OF EMPLOYEES.....	549
TORONTO GENERAL HOSPITAL RE C.U.P.E.....	463
TORONTO PHOTO-ENGRAVERS U.L. 35-P, LPIU RE THE COUNCIL OF PRINTING INDUSTRIES OF CANADA, (REPRESENTING THE ATTACHED LIST OF EMPLOYERS) AND L. 242, HAMILTON, LPIU.....	453
UNITED ELECTRICAL U. 504 RE MARTIN L. COSTELLO.....	523
400 UNIVERSITY AVENUE PROSPECT Co. RE C.U.O.E.....	449
URBANDALE REALTY CORPORATION LTD. RE C.J.A., L. 93.....	474
WELLS FARGO ARMoured EXPRESS, LTD. RE INT'L U. UNITED PLANT GUARD WORKERS OF AMERICA, L. 1962 AND T.C.W.H. L. 91 AFFILIATED WITH T.C.W.H.....	417

INDEX OF CASES

ARBITRATION - STRIKE - S1(1)(M) - "HOT CARGO" - REFUSAL TO
HANDLE GOODS OF AN EMPLOYER WHOSE EMPLOYEES ARE ENGAGED
IN A LABOUR DISPUTE WITH THEIR EMPLOYER - WHETHER CON-
CERTED ACTIVITY - S63(1)(2) - WHETHER AT A TIME PROHIBITED
BY THE ACT - S36 - CONTRACTING OUT OF THE ACT - WHETHER
COUNTEANANCED BY THE BOARD - PROBABLE EFFECT ON ARBITRATION
HEARING - INFORMATIONAL PICKETING - WHETHER LAWFUL - EFFECT
OF "SECONDARY PICKETING".

ASSOCIATED FREEZERS OF CANADA LIMITED v. WAREHOUSEMEN
AND MISCELLANEOUS DRIVERS LOCAL 419, AFFILIATED WITH
THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS OF AMERICA AND ASSOCIATED
FREEZERS OF CANADA LIMITED v. GUY BERNIER, RONALD KOWK,
AL MORRIS, STANLEY PERRY, CLIFFORD STACEY AND RALPH
STRINGER.....

445

ARBITRATION - UNLAWFUL LOCK-OUT - S123(2) - WHERE TRADE UNION
BARGAINING AGENT AND EMPLOYER ARE IN THE COURSE OF
NEGOTIATION FOR A RENEWED COLLECTIVE AGREEMENT - S1(1)(1)
- WHETHER THE CLOSING DOWN OF A WORK PROJECT CONSTITUTES
AN UNLAWFUL LOCK-OUT IN CIRCUMSTANCES WHERE TRADE UNION
MEMBER EMPLOYEES REFUSE TO CONTINUE PROJECT WITHOUT TRADE
UNION AUTHORIZATION - S37(1) - WHETHER THE PROCEEDING A
SUBTERFUGE CALCULATED TO CAUSE AN INTERPRETATION OF THE
RELEVANT PROVISION OF A COLLECTIVE AGREEMENT - S63 -
INTENT OF THE LEGISLATURE.

INTERNATIONAL UNION OF ELEVATOR CONSTRUCTORS, LOCAL 50
v. DOVER CORPORATION (CANADA) LTD., TURNBULL ELEVATOR
DIVISION.....

540

BARGAINING RIGHTS - BARGAINING UNIT - S5(4) - WHETHER UNIT PRO-
POSED HERETOFORE INCLUDED UNDER A SUBSISTING COLLECTIVE
AGREEMENT - WHETHER APPLICATION UNTIMELY - WHETHER UNIT
PROPOSED A TAG-END UNIT OR AN ACCRETION TO AN APPROPRIATE
BARGAINING UNIT - DISTINCTION MADE BETWEEN A TAG-END UNIT
AND AN ACCRETION TO AN EXISTING UNIT.

WAREHOUSEMEN AND MISCELLANEOUS DRIVERS UNION, LOCAL 419
AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA v. AJAX AND
PICKERING GENERAL HOSPITAL v. CANADIAN UNION OF PUBLIC EM-
PLOYEES v. NURSES' ASSOCIATION AJAX AND PICKERING GENERAL
HOSPITAL.....

477

BARGAINING RIGHTS - CONCILIATION - S45 - WHETHER TIMELY NOTICE FOR RENEWAL - S102 - WHETHER REQUIREMENTS OF SECTION MET - S15(1) - WHETHER MINISTER HAS AUTHORITY TO APPOINT A CONCILIATION OFFICER - S96 - MATTER REFERRED TO THE BOARD.

G. M. NELSON WELDING v. INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL 786.....

481

BARGAINING RIGHTS - S1(1)(E) - WHETHER A TELEGRAM AGREEING TO ABIDE BY THE TERMS OF AN AGREEMENT CONSTITUTES A COLLECTIVE AGREEMENT - S53(2) - WHETHER TIME LIMITS SATISFIED FOR PURPOSES OF ENTERTAINING AN APPLICATION FOR CERTIFICATION - WHETHER AN ABANDONMENT OF BARGAINING RIGHTS.

CHRISTIAN LABOUR ASSOCIATION OF CANADA v. NORTH SIMCOE ELECTRICAL CONTRACTING LTD. v. INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION 1687.....

411

BARGAINING RIGHTS - S5 - WHERE ONE COLLECTIVE AGREEMENT INCORPORATES BY REFERENCE ANOTHER COLLECTIVE AGREEMENT - EFFECT OF A CLAUSE PROVIDING THAT IN THE EVENT OF CONFLICT THE FORMER IS TO SUPERCEDE THE LATTER - WHETHER APPLICATION FOR CERTIFICATION IS TIMELY.

CHRISTIAN LABOUR ASSOCIATION OF CANADA v. BAYSIDE INDUSTRIES LIMITED v. MILLWRIGHTS' LOCAL 2309, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA.....

557

BARGAINING RIGHTS - S15(1) - DETERMINING WHETHER A "PARTY" ENTITLED TO APPLY FOR THE APPOINTMENT OF A CONCILIATION OFFICER - S45(1) - WHETHER TWO TRADE UNIONS ARE PARTIES ENTITLED TO GIVE NOTICE FOR RENEWAL - S35(1) - EFFECT OF RECOGNITION CLAUSE CONTAINED IN EXPIRED COLLECTIVE AGREEMENT - S70(1) - NATURE OF DISPUTE DEFINED - S96 - WHETHER MINISTER ADVISED TO APPOINT A CONCILIATION OFFICER.

THE COUNCIL OF PRINTING INDUSTRIES OF CANADA, (REPRESENTING THE ATTACHED LIST OF EMPLOYERS) v. TORONTO PHOTO-ENGRAVERS UNION LOCAL NO. 35-P, LPIU v. LOCAL 242, HAMILTON LPIU.....

453

BARGAINING RIGHTS - S52 - WHETHER TRADE UNION ENTITLED TO REPRESENT EMPLOYEES AT THE DATE COLLECTIVE AGREEMENT ENTERED INTO - EFFECT OF VOLUNTARY RECOGNITION SUBSEQUENT TO AN APPLICATION FOR CERTIFICATION - WHETHER COLLECTIVE AGREEMENT ENTERED INTO IN THE SHADOW OF THE APPLICANT'S ORGANIZATIONAL CAMPAIGN.

CANADIAN UNION OF PUBLIC EMPLOYEES v. THE DOCTORS HOSPITAL
v. INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796..... 401

BARGAINING UNIT - BARGAINING RIGHTS - S5(4) - WHETHER UNIT PRO-
POSED HERETOFORE INCLUDED UNDER A SUBSISTING COLLECTIVE
AGREEMENT - WHETHER APPLICATION UNTIMELY - WHETHER UNIT
PROPOSED A TAG-END UNIT OR AN ACCRETION TO AN APPROPRIATE
BARGAINING UNIT - DISTINCTION MADE BETWEEN A TAG-END UNIT
AND AN ACCRETION TO AN EXISTING UNIT.

WAREHOUSEMEN AND MISCELLANEOUS DRIVERS UNION, LOCAL 419
AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA v. AJAX AND
PICKERING GENERAL HOSPITAL v. CANADIAN UNION OF PUBLIC EM-
PLOYEES v. NURSES' ASSOCIATION AJAX AND PICKERING GENERAL
HOSPITAL..... 477

BARGAINING UNIT - REPRESENTATION VOTE - CONSTRUCTION INDUSTRY
- EMPLOYEES ALTHOUGH EMPLOYED IN THE EMPLOY OF THE EM-
PLOYER ON THE DATE OF THE MAKING OF THE APPLICATION WERE
ENGAGED OUTSIDE THE JURISDICTION OF THE PROVINCE OF ONT-
ARIO - WHETHER INCLUDED IN THE BARGAINING UNIT - WHERE
APPLICANT IN A CERTIFIABLE POSITION - WHETHER REPRESENTA-
TION VOTE DIRECTED.

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL
UNION 586 v. DONALD SERVANT ELECTRIC LIMITED..... 409

BARGAINING UNIT - RETAIL FOOD STORES - DETERMINING THE APPRO-
PRIATE GEOGRAPHIC AREA - WHETHER A PROVINCE WIDE UNIT
APPROPRIATE - WHETHER TO BOARD TO CONFINE THE UNIT TO A
MUNICIPAL AREA.

RETAIL CLERKS INTERNATIONAL ASSOCIATION v. SUNNYBROOK FOOD
MARKET (KEELE) LIMITED v. LOCAL 206, NATIONAL COUNCIL OF
CANADIAN LABOUR v. GROUP OF EMPLOYEES..... 549

BARGAINING UNITS - CONSTRUCTION INDUSTRY - WHETHER BOARD WILL
CONFINE THE BARGAINING UNIT TO COMMERCIAL AND INDUSTRIAL
PROJECTS - BOARD PRACTICE IS NOT DEFINE BARGAINING UNITS
WITH RESPECT TO THE NATURE OF THE WORK PERFORMED OR WITH
RESPECT TO CERTAIN PROJECTS - WHETHER ISSUE RAISED IS
MATTER FOR COLLECTIVE BARGAINING.

BRICKLAYERS, MASONS & PLASTERERS INTERNATIONAL UNION OF
AMERICA, LOCAL 13 v. MENARD BROTHERS LIMITED..... 460

BUILD-UP - CONSTRUCTION INDUSTRY - REPRESENTATION VOTE - S108
 (2) - BOARD DISCRETION IN APPLYING THE BUILD-UP PRINCIPLE
 UNDER THE CONSTRUCTION INDUSTRY PROVISIONS OF THE ACT COM-
 PARED WITH THE REGULAR PROVISIONS OF THE ACT - BOARD DIS-
 POSITION NOT TO APPLY PRINCIPLE IN THE CONSTRUCTION INDUSTRY
 EXPLAINED - WHETHER THE BOARD TO VARY FROM ESTABLISHED
 POLICY - WHETHER REPRESENTATION VOTE APPROPRIATE.

UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA
 LOCAL UNION 249 KINGSTON ONTARIO v. J. G. FITZPATRICK
 CONSTRUCTION LTD.....

485

BUILD-UP - PRACTICE - CERTIFICATION - POLICY OF THE BOARD -
 WHETHER A SUBSTANTIVE AND REPRESENTATIVE SEGMENT OF THE
 WORK FORCE IS PRESENT - WHETHER AN ASSESSMENT CAN BE
 MADE AS OF THE DATE OF THE APPLICATION.

INTERNATIONAL BROTHERHOOD OF PULP, SULPHITE AND PAPER
 MILL WORKERS v. CHAMPLAIN FOREST PRODUCTS LIMITED v.
 GROUP OF EMPLOYEES.....

399

CERTIFICATION - BUILD-UP - PRACTICE - POLICY OF THE BOARD -
 WHETHER A SUBSTANTIVE AND REPRESENTATIVE SEGMENT OF THE
 WORK FORCE IS PRESENT - WHETHER AN ASSESSMENT CAN BE
 MADE AS OF THE DATE OF THE APPLICATION.

INTERNATIONAL BROTHERHOOD OF PULP, SULPHITE AND PAPER
 MILL WORKERS v. CHAMPLAIN FOREST PRODUCTS LIMITED v. GROUP
 OF EMPLOYEES.....

399

CONCILIATION - BARGAINING RIGHTS - S45 - WHETHER TIMELY NOTICE
 FOR RENEWAL - S102 - WHETHER REQUIREMENTS OF SECTION MET
 - S15(1) - WHETHER MINISTER HAS AUTHORITY TO APPOINT A
 CONCILIATION OFFICER - S96 - MATTER REFERRED TO THE BOARD.

G. M. NELSON WELDING v. INTERNATIONAL ASSOCIATION OF
 BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL
 786.....

481

CONCILIATION - JURISDICTION - RECONSIDERATION - S95(1) -
 WHETHER THE BOARD OVERLOOKED EVIDENCE IN ORIGINAL DECISION
 - WHETHER BY AGREEMENT OF THE PARTIES IT WAS UNDERSTOOD
 THAT EVIDENCE IN QUESTION WAS INTENDED TO BE DISREGARDED
 - WHETHER REQUEST FOR RECONSIDERATION DENIED - WHETHER IT
 IS WITHIN THE COMPETENCE OF THE BOARD TO APPOINT A CON-
 CILIATION OFFICER.

TEXTILE WORKERS UNION OF AMERICA, AFL-CIO-CLC v. FEDERAL
 PACKAGING AND PARTITION COMPANY LIMITED v. FEDERAL PAC-
 KAGING EMPLOYEES ASSOCIATION v. GROUP OF EMPLOYEES.....

483

CONSTITUTIONAL LAW - JURISDICTION - BRITISH NORTH AMERICA ACT
(1867) - S92(10)(A) - INTERNATIONAL UNDERTAKING - WHETHER
BOARD TO ASSERT JURISDICTION.

CHRISTIAN LABOUR ASSOCIATION OF CANADA v. MERCHANTS SPEEDY
DELIVERY LIMITED v. TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND
HELPERS LOCAL 880 AFFILIATED WITH THE INTERNATIONAL BROTHER-
HOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF
AMERICA.....

397

CONSTITUTIONAL LAW - JURISDICTION - STRIKE - CONSTRUCTION
INDUSTRY - S123(1) - "INTERESTED PERSON" - INTERPRETA-
TION - WHETHER AN EMPLOYER OF THE EMPLOYEES ALLEGED TO
BE ON AN UNLAWFUL STRIKE - BRITISH NORTH AMERICA ACT
(1867) 30-31 VICT., C 3. S.96 - WHETHER BOARD ACTING
IN A MANNER ANALOGOUS TO A SUPERIOR COURT - WHETHER
BOARD TO ASSERT JURISDICTION - S1(1)(M) - WHETHER A
STRIKE - S63 - WHETHER AT A TIME PROHIBITED BY OPERA-
TION OF THE L.R.A. - S36 - EFFECT OF CONTRACTING OUT
OF A PROVISION OF THE L.R.A. - WHETHER BOARD TO EXERCISE
ITS DISCRETION NOT TO ISSUE AN ORDER.

DOVER CORPORATION (CANADA) LTD. TURNBULL ELEVATOR
DIVISION v. JOHN RICHARD BURFIELD, RICHARD HERBERT
YAKELEY INTERNATIONAL UNION OF ELEVATOR CONSTRUCTORS,
LOCAL 50.....

435

CONSTITUTIONAL LAW - JURISDICTION - WHETHER THE RESPONDENT ON
THE BALANCE OF PROBABILITIES OPERATES ON INTERPROVINCIAL
UNDERTAKING.

INTERNATIONAL UNION, UNITED PLANT GUARD WORKERS OF AMER-
ICA, LOCAL 1962 v. WELLS FARGO ARMoured EXPRESS, LTD. v.
TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL 91
AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAM-
STERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA.....

417

CONSTRUCTION INDUSTRY - BARGAINING UNIT - REPRESENTATION VOTE
- EMPLOYEES ALTHOUGH EMPLOYED IN THE EMPLOY OF THE EM-
PLOYER ON THE DATE OF THE MAKING OF THE APPLICATION WERE
ENGAGED OUTSIDE THE JURISDICTION OF THE PROVINCE OF ONT-
ARIO - WHETHER INCLUDED IN THE BARGAINING UNIT - WHERE
APPLICANT IN A CERTIFIABLE POSITION - WHETHER REPRESENTA-
TION VOTE DIRECTED.

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL
UNION 586 v. DONALD SERVANT ELECTRIC LIMITED.....

409

IX

CONSTRUCTION INDUSTRY - BARGAINING UNITS - WHETHER BOARD WILL
 CONFINE THE BARGAINING UNIT TO COMMERCIAL AND INDUSTRIAL
 PROJECTS - BOARD PRACTICE IS NOT DEFINE BARGAINING UNITS
 WITH RESPECT TO THE NATURE OF THE WORK PERFORMED OR WITH
 RESPECT TO CERTAIN PROJECTS - WHETHER ISSUE RAISED IS
 MATTER FOR COLLECTIVE AGREEMENT.

BRICKLAYERS, MASONS & PLASTERERS INTERNATIONAL UNION OF
 AMERICA, LOCAL 13 v. MENARD BROTHERS LIMITED.....

460

CONSTRUCTION INDUSTRY - CONSTITUTIONAL LAW - JURISDICTION -
 STRIKE - S123(1) - "INTERESTED PERSON" - INTERPRETATION
 - WHETHER AN EMPLOYER OF THE EMPLOYEES ALLEGED TO BE ON
 AN UNLAWFUL STRIKE - BRITISH NORTH AMERICA ACT (1867)
 30-31 VICT., c 3. S.96 - WHETHER BOARD ACTING IN A MANNER
 ANALOGOUS TO A SUPERIOR COURT - WHETHER BOARD TO ASSERT
 JURISDICTION - S1(1)(M) - WHETHER A STRIKE - S63 - WHETHER
 AT A TIME PROHIBITED BY OPERATION OF THE L.R.A. - S36 -
 EFFECT OF CONTRACTING OUT OF A PROVISION OF THE L.R.A. -
 WHETHER BOARD TO EXERCISE ITS DISCRETION NOT TO ISSUE AN
 ORDER.

DOVER CORPORATION (CANADA) LTD. TURNBULL ELEVATOR
 DIVISION v. JOHN RICHARD BURFIELD, RICHARD HERBERT
 YAKELEY INTERNATIONAL UNION OF ELEVATOR CONSTRUCTORS,
 LOCAL 50.....

435

CONSTRUCTION INDUSTRY - EMPLOYEE - S1(3)(B) - WHETHER A WORKING
 FOREMAN - WHETHER EXERCISES MANAGERIAL FUNCTIONS - CRITERIA
 THE BOARD APPLIES.

UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA,
 LOCAL 93 v. URBANDALE REALTY CORPORATION LIMITED.....

474

CONSTRUCTION INDUSTRY - REPRESENTATION VOTE - BUILD-UP - S108
 (2) - BOARD DISCRETION IN APPLYING THE BUILD-UP PRINCIPLE
 UNDER THE CONSTRUCTION INDUSTRY PROVISIONS OF THE ACT COM-
 PARED WITH THE REGULAR PROVISIONS OF THE ACT - BOARD DIS-
 POSITION NOT TO APPLY PRINCIPLE IN THE CONSTRUCTION INDUSTRY
 EXPLAINED - WHETHER THE BOARD TO VARY FROM ESTABLISHED
 POLICY - WHETHER REPRESENTATION VOTE APPROPRIATE.

UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA
 LOCAL UNION 249 KINGSTON ONTARIO v. J. G. FITZPATRICK
 CONSTRUCTION LTD.....

485

EMPLOYEE - CONSTRUCTION INDUSTRY - S1(3)(B) - WHETHER A WORKING FOREMAN - WHETHER EXERCISES MANAGERIAL FUNCTIONS - CRITERIA THE BOARD APPLIES.

UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA,
LOCAL 93 v. URBANDALE REALTY CORPORATION LIMITED.....

474

EMPLOYEES - INDEPENDENT CONTRACTOR - TESTS TO BE APPLIED - FACTORS TO BE CONSIDERED - OWNER - OPERATORS OF VEHICLES - EFFECT OF AN AGREEMENT "TO UTILIZE THE SERVICES OF THE OWNER" - WHETHER IN FACT A "SMALL BUSINESSMAN".

INTERNATIONAL WOODWORKERS OF AMERICA v. LIVINGSTON TRANSPORTATION LIMITED.....

488

EMPLOYEES - UNLAWFUL LOCK-OUT - SALE OF A BUSINESS - RELATED EMPLOYER - S123(2) - WHETHER NOTICE OF TERMINATION OF EMPLOYMENT AN UNLAWFUL LOCK-OUT - S1(1)(i) - WHETHER A LOCK-OUT - WHETHER DEPRIVED OF RIGHTS OF MEMBERSHIP OR REPRESENTATION BY A TRADE UNION OR ANY OTHER RIGHT UNDER THE ACT - S55(1)(A)(B) - WHETHER DIVESTING OF A PART OF A BUSINESS A SALE - S55(3) - WHETHER ENTITLED TO GIVE SUCCESSOR EMPLOYER NOTICE TO BARGAIN IN ABSENCE OF A COLLECTIVE AGREEMENT AT THE TIME THE SALE TRANSPIRED - S68 - WHETHER ENTREPRENEURIAL DECISION REQUIRING TERMINATING AN EMPLOYMENT RELATIONSHIP CONTEMPLATED BY THE ACT - INDEPENDENT CONTRACTORS - WHETHER OIL BURNER INSTALLERS RETAINED BY SUCCESSOR COMPANY ARE EMPLOYEES - S1(1)(4) - WHETHER TWO COMPANIES CARRYING ON BUSINESS AS ONE EMPLOYER - EFFECT OF THE NATURE OF THE TRANSACTION.

LOCAL UNION 46 OF THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA v. AUTOMATIC FUELS LIMITED, DEPENDABLE SERVICE.....

515

EVIDENCE - PRACTICE - EXAMINER'S INQUIRY - STATUS TO INTERVENE - WHETHER EVIDENCE OF MEMBERSHIP WITH RESPECT TO CERTAIN EMPLOYEES WHOSE NAMES APPEAR ON LISTS FILED BY THE RESPONDENT EMPLOYER - LIMITS TO AN EXAMINER'S INQUIRY - WHETHER THE BOARD WILL PERMIT THE EXAMINER TO EXCEED HIS TERMS OF REFERENCE - WHETHER INQUIRING INTO THE CORPORATE STRUCTURE OF THE RESPONDENT COMPANY IS WITHIN THE TERMS OF THE EXAMINER'S APPOINTMENT.

LOCAL 1190 OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA v. 228095 INVESTMENTS LIMITED, CARRYING ON BUSINESS UNDER THE NAME OF ADENA FORMING LTD. v. CANADIAN UNION OF CONSTRUCTION WORKERS v. LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 18.....

471

FAIR REPRESENTATION - S79 - EFFECT OF GRIEVOR ACCEPTING A SETTLEMENT OF A GRIEVANCE NEGOTIATED WITH EMPLOYER AND TRADE UNION REPRESENTATIVE - EFFECT OF LATER DISSATISFACTION WITH SETTLEMENT - S60 - WHETHER TRADE UNION MAY BE HELD RESPONSIBLE FOR BREACH OF ITS DUTY OF FAIR REPRESENTATION.

MARTIN L. COSTELLO v. UNITED ELECTRICAL UNION 504..... 523

FAIR REPRESENTATION - S79 - S60 - WHETHER AGGRIEVED TREATED CONTRARY TO THE SECTION - WHETHER ENTITLED TO WORK DAY SHIFT - EFFECT OF ABSENCE OF SHIFT - SENIORITY CLAUSE UNDER THE SUBSISTING COLLECTIVE AGREEMENT - EFFECT OF DEFERRED POSITION UNDER PLANT - SENIORITY PROVISION - WHETHER BOARD TO PROCEED FURTHER BY MEANS OF A FORMAL HEARING.

LORRAINE DENNING v. OIL, CHEMICAL & ATOMIC WORKERS INTERNATIONAL UNION AND ITS LOCAL 9-698..... 521

FAIR REPRESENTATION - S79 - TERMINATION - FAILURE OF GRIEVOR TO FILE A GRIEVANCE IN THE PRESCRIBED MANNER - S60 - WHETHER THE TRADE UNION RESPONDENT IS IN BREACH OF ITS DUTY OF FAIR REPRESENTATION - WHETHER THE BOARD TO INQUIRE FURTHER INTO THE COMPLAINT BY MEANS OF A FORMAL HEARING.

I. K. TAMIMI, ESQUIRE OF THE TOWNSHIP OF BRAMPTON, IN THE COUNTY OF PEEL v. MASSEY FERGUSON, ESQUIRE, OF THE MUNICIPALITY OF METROPOLITAN TORONTO, IN THE COUNTY OF YORK..... 524

FAIR REPRESENTATION - S79 - THE COMPLAINT AS IT RELATED TO THE RESPONDENT EMPLOYER - S58(A) - WHETHER A PRIMA FACIE CASE - S46 OF BOARD'S RULES - S60 - WHETHER TRADE UNION FAILED IN ITS DUTY TO FAIRLY REPRESENT GRIEVOR - WHETHER GRIEVOR SATISFIED THE BOARD THAT TRADE UNION ACTED ARBITRARILY, DISCRIMINATORILY OR IN BAD FAITH IN PROCESSING A GRIEVANCE UNDER A SUBSISTING COLLECTIVE AGREEMENT.

BRIAN F. O'DONNELL v. AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA AND STEINBERG'S LIMITED OTHERWISE KNOWN AS MIRACLE FOOD MART..... 423

JURISDICTION - CONSTITUTIONAL LAW - BRITISH NORTH AMERICA ACT
(1867) - S92(10)(A) - INTERNATIONAL UNDERTAKING - WHETHER
BOARD TO ASSERT JURISDICTION.

CHRISTIAN LABOUR ASSOCIATION OF CANADA v. MERCHANTS SPEEDY
DELIVERY LIMITED v. TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND
HELPERS LOCAL 880 AFFILIATED WITH THE INTERNATIONAL BROTHER-
HOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF
AMERICA.....

397

JURISDICTION - CONSTITUTIONAL LAW - WHETHER THE RESPONDENT ON
THE BALANCE OF PROBABILITIES OPERATES ON INTERPROVINCIAL
UNDERTAKING.

INTERNATIONAL UNION, UNITED PLANT GUARD WORKERS OF AMER-
ICA, LOCAL 1962 v. WELLS FARGO ARMoured EXPRESS, LTD. v.
TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL 91
AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAM-
STERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA.....

417

JURISDICTION - RECONSIDERATION - CONCILIATION - S95(1) -
WHETHER THE BOARD OVERLOOKED EVIDENCE IN ORIGINAL DECISION
- WHETHER BY AGREEMENT OF THE PARTIES IT WAS UNDERSTOOD
THAT EVIDENCE IN QUESTION WAS INTENDED TO BE DISREGARDED
- WHETHER REQUEST FOR RECONSIDERATION DENIED - WHETHER IT
IS WITHIN THE COMPETENCE OF THE BOARD TO APPOINT A CON-
CILIATION OFFICER.

TEXTILE WORKERS UNION OF AMERICA, AFL-CIO-CLC v. FEDERAL
PACKAGING AND PARTITION COMPANY LIMITED v. FEDERAL PAC-
KAGING EMPLOYEES ASSOCIATION v. GROUP OF EMPLOYEES.....

483

JURISDICTION - RECONSIDERATION - S91(9) - WHERE BOARD MEMBER
DIES DURING THE INTERIM PERIOD BETWEEN THE BOARD'S INITIAL
DETERMINATION AND AN APPLICATION FOR RECONSIDERATION -
WHETHER BOARD MAY PROCEED WITH A SUBSTITUTE MEMBER -
WHETHER EFFECT TO PROCEED WITH A SUBSTITUTE CONSTITUTES
A BREACH OF THE RULES OF NATURAL JUSTICE - S95(1) -
NATURE OF THE PROCEEDING - WHETHER IT FORMS A PART OF
THE SAME PROCEEDING FOR WHICH RECONSIDERATION IS SOUGHT.

CSAO NATIONAL (INC.) v. THE GREATER NIAGARA GENERAL HOS-
PITAL v. INTERNATIONAL UNION OF OPERATING ENGINEERS,
LOCAL 772.....

544

JURISDICTION - STRIKE - CONSTRUCTION INDUSTRY - CONSTITUTIONAL
 LAW - S123(1) - "INTERESTED PERSON" - INTERPRETATION
 - WHETHER AN EMPLOYER OF THE EMPLOYEES ALLEGED TO BE ON
 AN UNLAWFUL STRIKE - BRITISH NORTH AMERICA ACT (1867)
 30-31 VICT., c 3. S.96 - WHETHER BOARD ACTING IN A MANNER
 ANALOGOUS TO A SUPERIOR COURT - WHETHER BOARD TO ASSERT
 JURISDICTION - S1(1)(M) - WHETHER A STRIKE - S63 - WHETHER
 AT A TIME PROHIBITED BY OPERATION OF THE L.R.A. - S36 -
 EFFECT OF CONTRACTING OUT OF A PROVISION OF THE L.R.A. -
 WHETHER BOARD TO EXERCISE ITS DISCRETION NOT TO ISSUE AN
 ORDER.

DOVER CORPORATION (CANADA) LTD. TURNBULL ELEVATOR
 DIVISION v. JOHN RICHARD BURFIELD, RICHARD HERBERT
 YAKELEY INTERNATIONAL UNION OF ELEVATOR CONSTRUCTORS,
 LOCAL 50.....

435

JURISDICTIONAL DISPUTE - S81 - INTERIM ORDER - WHETHER STRIKE
 IMMINENT - WHETHER ASSIGNMENT TO LABOURERS OR CARPENTERS.

FRANCON DIVISION OF CANFARGE LTD. v. LOCAL 93 UNITED BRO-
 THERHOOD OF CARPENTERS AND JOINERS OF AMERICA v. LOCAL
 527 LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOUIS
 DONOLO INC.....

510

JURISDICTIONAL DISPUTE - WHETHER WORK ASSIGNMENT TO LABOURERS
 OR A MIXED CREW OF LABOURERS AND IRON WORKERS - FACTORS
 CONSIDERED - EFFECT OF AN OUTSIDE CONTRACTOR ENGAGING IN
 PRACTICES DIFFERENT IN NATURE FROM THE "AREA PRACTICE"
 WHERE PROJECT IS LOCATED.

GENERAL CONCRETE LTD. v. INTERNATIONAL ASSOCIATION OF
 BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL 700
 AND LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA,
 LOCALS 506 AND 625.....

418

MEMBERSHIP EVIDENCE - PETITION - REPRESENTATION VOTE - S7(2) -
 EXERCISE OF BOARD DISCRETION - CIRCUMSTANCES IN WHICH A
 REPRESENTATION VOTE IS DIRECTED.

SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, LOCAL
 UNION 540 v. SUBURBAN METAL INDUSTRIES LIMITED v. GROUP
 OF EMPLOYEES.....

398

XIV

MEMBERSHIP EVIDENCE - TRADE UNION - CHANGE OF NAME - FAILURE TO FILE WITH BOARD COPIES OF THE AMENDED CONSTITUTION - EVIDENCE OF MEMBERSHIP FILED UNDER OLD NAME - WHETHER BOARD REQUIREMENTS SATISFIED.

SERVICE EMPLOYEES UNION LOCAL 268 AFFILIATED WITH THE S.E.I.U. AF OF L., C.I.O., & C.L.C. v. GORDON A. MAC-EACHERN LIMITED, 21 McCAUL STREET, TORONTO 133, ONT-ARIO.....

404

PETITION - MEETING OF EMPLOYEES CALLED BY MANAGERS OF RESPONDENT - THREAT OF CLOSING DOWN EMPLOYER'S OPERATIONS - INFERENCE TO BE DRAWN - WHETHER A TRUE AND VOLUNTARY EXPRESSION OF EMPLOYEE'S WISHES.

UNITED STEELWORKERS OF AMERICA v. K. M. W. PRODUCTS LIMITED v. GROUP OF EMPLOYEES.....

406

PETITION - REPRESENTATION VOTE - MEMBERSHIP EVIDENCE - S7(2) - EXERCISE OF BOARD DISCRETION - CIRCUMSTANCES IN WHICH A REPRESENTATION VOTE IS DIRECTED.

SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, LOCAL UNION 540 v. SUBURBAN METAL INDUSTRIES LIMITED v. GROUP OF EMPLOYEES.....

398

PRACTICE - CERTIFICATION - BUILD-UP - POLICY OF THE BOARD - WHETHER A SUBSTANTIVE AND REPRESENTATIVE SEGMENT OF THE WORK FORCE IS PRESENT - WHETHER AN ASSESSMENT CAN BE MADE AS OF THE DATE OF THE APPLICATION.

INTERNATIONAL BROTHERHOOD OF PULP, SULPHITE AND PAPER MILL WORKERS v. CHAMPLAIN FOREST PRODUCTS LIMITED v. GROUP OF EMPLOYEES.....

399

PRACTICE - EVIDENCE - EXAMINER'S INQUIRY - STATUS TO INTERVENE - WHETHER EVIDENCE OF MEMBERSHIP WITH RESPECT TO CERTAIN EMPLOYEES WHOSE NAMES APPEAR ON LISTS FILED BY THE RESPONDENT EMPLOYER - LIMITS TO AN EXAMINER'S INQUIRY - WHETHER THE BOARD WILL PERMIT THE EXAMINER TO EXCEED HIS TERMS OF REFERENCE - WHETHER INQUIRING INTO THE CORPORATE STRUCTURE OF THE RESPONDENT COMPANY IS WITHIN THE TERMS OF THE EXAMINER'S APPOINTMENT.

LOCAL 1190 OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA v. 228095 INVESTMENTS LIMITED, CARRYING ON BUSINESS UNDER THE NAME OF ADENA FORMING LTD. v. CANADIAN UNION OF CONSTRUCTION WORKERS v. LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183.....

471

PRACTICE - EXAMINERS INQUIRY - LOCATION OF INQUIRY - IT IS THE BOARD'S NORMAL PROCEDURE TO CONDUCT EXAMINERS INQUIRIES AT THE PREMISES OF THE EMPLOYER UNLESS OTHERWISE AGREED TO - WHETHER OBJECTION TO CONDUCTING EXAMINER'S INQUIRY ON EMPLOYER'S PREMISES ACCDED TO.

MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES LOCAL UNION NO. 647, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA v. GRANNY'S COUNTRY-OVEN BAKERY LIMITED v. GROUP OF EMPLOYEES.....

511

PRACTICE - S79 - DETERMINING QUANTUM OF COMPENSATION - POLICY OF THE BOARD - TO PLACE AGGRIEVED PERSONS IN THE SAME POSITION PRIOR TO THE VIOLATION OF THE L.R.A.

RETAIL AND FOOD EMPLOYEES LOCAL UNION 175, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC v. SUN PARLOUR GREENHOUSE GROWERS' CO-OPERATIVE LIMITED, ARMSTRONG PRODUCE COMPANY LIMITED, A.M.C. PRODUCE SHIPPERS INCORPORATED, MASTRONARDI PRODUCE LIMITED, GARDEN ACRE SALES, AN AGENCY OF ONTARIO GREENHOUSE PRODUCERS MARKETING BOARD.....

512

PROSECUTION - SALE OF A BUSINESS - TRADE UNION - WHETHER ASSIGNING WORK TO ONE LOCAL IN DEFERENCE TO ANOTHER LOCAL OF THE SAME TRADE UNION IS CONTRARY TO S61 OF THE ACT - EFFECT OF UNION SECURITY CLAUSE - MERGER OF SEVERAL COMPANIES - S55 - WHETHER PERTINENT UNDER THE CIRCUMSTANCES - DIRECTIVE OF GENERAL PRESIDENT OF THE PARENT TRADE UNION ASSIGNING WORK TO LOCAL - WHETHER RESPONDENTS ACTING IN GOOD FAITH - WHETHER A PRIMA FACIE CASE.

LOCAL 97, WOOD, WIRE AND METAL LATHERS INTERNATIONAL UNION v. NORTHDOWN DRYWALL AND CONSTRUCTION LIMITED AND LOCAL 97 OF THE WOOD, WIRE AND METAL LATHERS INTERNATIONAL UNION v. LOCAL 562 OF THE WOOD, WIRE AND METAL LATHERS INTERNATIONAL UNION.....

428

RECONSIDERATION - CONCILIATION - JURISDICTION - S95(1) - WHETHER THE BOARD OVERLOOKED EVIDENCE IN ORIGINAL DECISION - WHETHER BY AGREEMENT OF THE PARTIES IT WAS UNDERSTOOD THAT EVIDENCE IN QUESTION WAS INTENDED TO BE DISREGARDED - WHETHER REQUEST FOR RECONSIDERATION DENIED - WHETHER IT IS WITHIN THE COMPETENCE OF THE BOARD TO APPOINT A CONCILIATION OFFICER.

TEXTILE WORKERS UNION OF AMERICA, AFL-CIO-CLC v. FEDERAL
PACKAGING AND PARTITION COMPANY LIMITED v. FEDERAL PAC-
KAGING EMPLOYEES ASSOCIATION v. GROUP OF EMPLOYEES.....

483

RECONSIDERATION - JURISDICTION - S91(9) - WHERE BOARD MEMBER
DIES DURING THE INTERIM PERIOD BETWEEN THE BOARD'S INITIAL
DETERMINATION AND AN APPLICATION FOR RECONSIDERATION -
WHETHER BOARD MAY PROCEED WITH A SUBSTITUTE MEMBER -
WHETHER EFFECT TO PROCEED WITH A SUBSTITUTE CONSTITUTES
A BREACH OF THE RULES OF NATURAL JUSTICE - S95(1) -
NATURE OF THE PROCEEDING - WHETHER IT FORMS A PART OF
THE SAME PROCEEDING FOR WHICH RECONSIDERATION IS SOUGHT.

CSAO NATIONAL (INC.) v. THE GREATER NIAGARA GENERAL HOS-
PITAL v. INTERNATIONAL UNION OF OPERATING ENGINEERS,
LOCAL 772.....

544

RECONSIDERATION - S95(1) - WHERE BOARD DECISION BASED ON A
DISPUTED ASSUMPTION - WHETHER THE DECISION SHOULD BE
REVOKED.

THOMAS J. BERRY v. CIVIL SERVICE OF ONTARIO, INC.....

520

RELATED EMPLOYER - EMPLOYEES - UNLAWFUL LOCK-OUT - SALE OF A
BUSINESS - S123(2) - WHETHER NOTICE OF TERMINATION OF
EMPLOYMENT AN UNLAWFUL LOCK-OUT - S1(1)(1) - WHETHER A
LOCK-OUT - WHETHER DEPRIVED OF RIGHTS OF MEMBERSHIP OR
REPRESENTATION BY A TRADE UNION OR ANY OTHER RIGHT UNDER
THE ACT - S55(1)(A)(B) - WHETHER DIVESTING OF A PART OF
A BUSINESS A SALE - S55(3) - WHETHER ENTITLED TO GIVE
SUCCESSOR EMPLOYER NOTICE TO BARGAIN IN ABSENCE OF A COL-
LECTIVE AGREEMENT AT THE TIME THE SALE TRANSPIRED - S68
- WHETHER ENTREPRENEURIAL DECISION REQUIRING TERMINATING
AN EMPLOYMENT RELATIONSHIP CONTEMPLATED BY THE ACT - IN-
DEPENDENT CONTRACTORS - WHETHER OIL BURNER INSTALLERS
RETAINED BY SUCCESSOR COMPANY ARE EMPLOYEES - S1(1)(4) -
WHETHER TWO COMPANIES CARRYING ON BUSINESS AS ONE EMPLOYER
- EFFECT OF THE NATURE OF THE TRANSACTION.

LOCAL UNION 46 OF THE UNITED ASSOCIATION OF JOURNEYMEN
AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY
OF THE UNITED STATES AND CANADA v. AUTOMATIC FUELS LIMITED,
DEPENDABLE SERVICE.....

515

RELIGIOUS OBJECTION - WHETHER A PROVISION UNDER A COLLECTIVE AGREEMENT ENABLING APPLICANT TO CANCEL AUTHORIZATION FOR DUES DEDUCTION DEPRIVES BOARD OF JURISDICTION TO ENTERTAIN APPLICATION - WHETHER PROVISION PROVIDES APPLICANT WITH FULL RELIEF AS CONTEMPLATED BY THE ACT.

GEORGE DYKHUIS v. UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA AND ITS LOCAL 546 v. CANADIAN WEST-
INGHOUSE COMPANY LIMITED..... 395

REPRESENTATION VOTE - BUILD-UP - CONSTRUCTION INDUSTRY - S108 (2) - BOARD DISCRETION IN APPLYING THE BUILD-UP PRINCIPLE UNDER THE CONSTRUCTION INDUSTRY PROVISIONS OF THE ACT COMPARED WITH THE REGULAR PROVISIONS OF THE ACT - BOARD DISPOSITION NOT TO APPLY PRINCIPLE IN THE CONSTRUCTION INDUSTRY EXPLAINED - WHETHER THE BOARD TO VARY FROM ESTABLISHED POLICY - WHETHER REPRESENTATION VOTE APPROPRIATE.

UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL UNION 249 KINGSTON ONTARIO v. J. G. FITZPATRICK
CONSTRUCTION LTD..... 485

REPRESENTATION VOTE - CONSTRUCTION INDUSTRY - BARGAINING UNIT - EMPLOYEES ALTHOUGH EMPLOYED IN THE EMPLOY OF THE EMPLOYER ON THE DATE OF THE MAKING OF THE APPLICATION WERE ENGAGED OUTSIDE THE JURISDICTION OF THE PROVINCE OF ONTARIO - WHETHER INCLUDED IN THE BARGAINING UNIT - WHERE APPLICANT IN A CERTIFIABLE POSITION - WHETHER REPRESENTATION VOTE DIRECTED.

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION 586 v. DONALD SERVANT ELECTRIC LIMITED..... 409

REPRESENTATION VOTE - MEMBERSHIP EVIDENCE - PETITION - S7(2) - EXERCISE OF BOARD DISCRETION - CIRCUMSTANCES IN WHICH A REPRESENTATION VOTE IS DIRECTED.

SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, LOCAL UNION 540 v. SUBURBAN METAL INDUSTRIES LIMITED v. GROUP OF EMPLOYEES..... 398

SALE OF A BUSINESS - RELATED EMPLOYER - EMPLOYEES - UNLAWFUL
 LOCK-OUT - S123(2) - WHETHER NOTICE OF TERMINATION OF
 EMPLOYMENT AN UNLAWFUL LOCK-OUT - S1(1)(1) - WHETHER A
 LOCK-OUT - WHETHER DEPRIVED OF RIGHTS OF MEMBERSHIP OR
 REPRESENTATION BY A TRADE UNION OR ANY OTHER RIGHT UNDER
 THE ACT - S55(1)(A)(B) - WHETHER DIVESTING OF A PART OF
 A BUSINESS A SALE - S55(3) - WHETHER ENTITLED TO GIVE
 SUCCESSOR EMPLOYER NOTICE TO BARGAIN IN ABSENCE OF A COL-
 LECTIVE AGREEMENT AT THE TIME THE SALE TRANSPIRED - S68
 - WHETHER ENTREPRENEURIAL DECISION REQUIRING TERMINATING
 AN EMPLOYMENT RELATIONSHIP CONTEMPLATED BY THE ACT - IN-
 DEPENDENT CONTRACTORS - WHETHER OIL BURNER INSTALLERS
 RETAINED BY SUCCESSOR COMPANY ARE EMPLOYEES - S1(1)(4) -
 WHETHER TWO COMPANIES CARRYING ON BUSINESS AS ONE EMPLOYER
 - EFFECT OF THE NATURE OF THE TRANSACTION.

LOCAL UNION 46 OF THE UNITED ASSOCIATION OF JOURNEYMEN
 AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY
 OF THE UNITED STATES AND CANADA v. AUTOMATIC FUELS LIMITED,
 DEPENDABLE SERVICE.....

515

SALE OF A BUSINESS - TRADE UNION - PROSECUTION - WHETHER
 ASSIGNING WORK TO ONE LOCAL IN DEFERENCE TO ANOTHER
 LOCAL OF THE SAME TRADE UNION IS CONTRARY TO S61 OF
 THE ACT - EFFECT OF UNION SECURITY CLAUSE - MERGER
 OF SEVERAL COMPANIES - S55 - WHETHER PERTINENT UNDER
 THE CIRCUMSTANCES - DIRECTIVE OF GENERAL PRESIDENT OF
 THE PARENT TRADE UNION ASSIGNING WORK TO LOCAL -
 WHETHER RESPONDENTS ACTING IN GOOD FAITH - WHETHER A
PRIMA FACIE CASE.

LOCAL 97, WOOD, WIRE AND METAL LATHERS INTERNATIONAL
 UNION v. NORTHDOWN DRYWALL AND CONSTRUCTION LIMITED
 AND LOCAL 97 OF THE WOOD, WIRE AND METAL LATHERS IN-
 TERNATIONAL UNION v. LOCAL 562 OF THE WOOD, WIRE AND
 METAL LATHERS INTERNATIONAL UNION.....

428

S79 - DEMOTION - DISCHARGE - S58 - WHETHER FOR UNION ACTIVITY
 - EFFECT OF DISCREPANCIES OF A DISHONEST NATURE IN
 GRIEVOR'S JOB PERFORMANCE.

ANTHONY PITOSCIA v. SEVEN-UP (ONTARIO) LIMITED AND AN-
 THONY PITOSCIA v. SEVEN-UP (ONTARIO) LIMITED.....

551

XIX

- S79 - DISCHARGE - S58 - S61 - WHETHER UNION ACTIVITY PRECIPITATED DISMISSAL - WHETHER UNSATISFACTORY WORK PERFORMANCE A CREDIBLE EXCUSE - EFFECT OF TOLERATING EMPLOYEE'S IN COMPETENCE IN THE CIRCUMSTANCES.
- MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES, LOCAL 647 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA v. HOME BREAD BAKERY, A DIVISION OF CANADIAN FOOD PRODUCTS SALES LIMITED..... 537
- S79 - DISCHARGE - S58(A) - WHETHER FOR REASONS OF PARTICIPATION IN THE TERMINATION OF BARGAINING RIGHTS AN INCUMBENT TRADE UNION AND THE SUPPORT OF ANOTHER TRADE UNION - EFFECT OF ADVOCATING CONDUCT PROHIBITED BY THE PROVISIONS OF THE L.R.A. - S65 - WHETHER THE REAL REASON FOR THE DISCHARGE WAS THE PROMOTION OF AN UNLAWFUL WALK-OUT.
- CANADIAN UNION OF PUBLIC EMPLOYEES v. TORONTO GENERAL HOSPITAL..... 463
- S79 - DISCHARGE - WHETHER FOR UNION ACTIVITIES - S58(A) - EFFECT OF MEDICAL CERTIFICATE INDICATING PROBLEMS INCAPACITATING EMPLOYEE FROM PERFORMING DUTIES.
- THE CANADIAN UNION OF OPERATING ENGINEERS v. 400 UNIVERSITY AVENUE PROSPECT COMPANY..... 449
- S79 - FAIR REPRESENTATION - EFFECT OF GRIEVOR ACCEPTING A SETTLEMENT OF A GRIEVANCE NEGOTIATED WITH EMPLOYER AND TRADE UNION REPRESENTATIVE - EFFECT OF LATER DISSATISFACTION WITH SETTLEMENT - S60 - WHETHER TRADE UNION MAY BE HELD RESPONSIBLE FOR BREACH OF ITS DUTY OF FAIR REPRESENTATION.
- MARTIN L. COSTELLO v. UNITED ELECTRICAL UNION 504..... 523
- S79 - FAIR REPRESENTATION - S60 - WHETHER AGGRIEVED TREATED CONTRARY TO THE SECTION - WHETHER ENTITLED TO WORK DAY SHIFT - EFFECT OF ABSENCE OF SHIFT - SENIORITY CLAUSE UNDER THE SUBSISTING COLLECTIVE AGREEMENT - EFFECT OF DEFERRED POSITION UNDER PLANT - SENIORITY PROVISION - WHETHER BOARD TO PROCEED FURTHER BY MEANS OF A FORMAL HEARING.
- LORRAINE DENNING v. OIL, CHEMICAL & ATOMIC WORKERS INTERNATIONAL UNION AND ITS LOCAL 9-698..... 521

- S79 - FAIR REPRESENTATION - TERMINATION - FAILURE OF GRIEVOR TO FILE A GRIEVANCE IN THE PRESCRIBED MANNER - S60 - WHETHER THE TRADE UNION RESPONDENT IS IN BREACH OF ITS DUTY OF FAIR REPRESENTATION - WHETHER THE BOARD TO INQUIRE FURTHER INTO THE COMPLAINT BY MEANS OF A FORMAL HEARING.

I. K. TAMIMI, ESQUIRE OF THE TOWNSHIP OF BRAMPTON, IN THE COUNTY OF PEEL v. MASSEY FERGUSON, ESQUIRE, OF THE MUNICIPALITY OF METROPOLITAN TORONTO, IN THE COUNTY OF YORK.....

524

- S79 - FAIR REPRESENTATION - THE COMPLAINT AS IT RELATED TO THE RESPONDENT EMPLOYER - S58(A) - WHETHER A PRIMA FACIE CASE - S46 OF BOARD'S RULES - S60 - WHETHER TRADE UNION FAILED IN ITS DUTY TO FAIRLY REPRESENT GRIEVOR - WHETHER GRIEVOR SATISFIED THE BOARD THAT TRADE UNION ACTED ARBITRARILY, DISCRIMINATORILY OR IN BAD FAITH IN PROCESSING A GRIEVANCE UNDER A SUBSISTING COLLECTIVE AGREEMENT.

BRIAN F. O'DONNELL v. AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA AND STEINBERG'S LIMITED OTHERWISE KNOWN AS MIRACLE FOOD MART.....

423

- S79 - PRACTICE - DETERMINING QUANTUM OF COMPENSATION - POLICY OF THE BOARD - TO PLACE AGGRIEVED PERSONS IN THE SAME POSITION PRIOR TO THE VIOLATION OF THE L.R.A.

RETAIL AND FOOD EMPLOYEES LOCAL UNION 175, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC v. SUN PARLOUR GREENHOUSE GROWERS' CO-OPERATIVE LIMITED, ARMSTRONG PRODUCE COMPANY LIMITED, A.M.C. PRODUCE SHIPPERS INCORPORATED, MASTRONARDI PRODUCE LIMITED, GARDEN ACRE SALES, AN AGENCY OF ONTARIO GREENHOUSE PRODUCERS MARKETING BOARD.....

512

- S79 - WHETHER DISCHARGE CONTRARY TO L.R.A. - S58(A) - WHETHER BOARD SATISFIED OF THE EXISTENCE OF AN ANTI-UNION BIAS - EFFECT OF THE ACTIVITIES OF A SUPERVISOR.

LONDON AND DISTRICT BUILDING SERVICE WORKERS' UNION, LOCAL 220, S.E.I.U., A.F. OF L., C.I.O., C.L.C. v. EXTENDICARE (CANADA) LTD.....

441

STRIKE - ARBITRATION - S1(1)(M) - "HOT CARGO" - REFUSAL TO
HANDLE GOODS OF AN EMPLOYER WHOSE EMPLOYEES ARE ENGAGED
IN A LABOUR DISPUTE WITH THEIR EMPLOYER - WHETHER CON-
CERTED ACTIVITY - S63(1)(2) - WHETHER AT A TIME PROHIBITED
BY THE ACT - S36 - CONTRACTING OUT OF THE ACT - WHETHER
COUNTEANANCED BY THE BOARD - PROBABLE EFFECT ON ARBITRATION
HEARING - INFORMATIONAL PICKETING - WHETHER LAWFUL - EFFECT
OF "SECONDARY PICKETING".

ASSOCIATED FREEZERS OF CANADA LIMITED v. WAREHOUSEMEN
AND MISCELLANEOUS DRIVERS LOCAL 419, AFFILIATED WITH
THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS OF AMERICA AND ASSOCIATED
FREEZERS OF CANADA LIMITED v. GUY BERNIER, RONALD KOWK,
AL MORRIS, STANLEY PERRY, CLIFFORD STACEY AND RALPH
STRINGER.....

445

STRIKE - CONSTRUCTION INDUSTRY - CONSTITUTIONAL LAW - JURIS-
DICTION - S123(1) - "INTERESTED PERSON" - INTERPRETA-
TION - WHETHER AN EMPLOYER OF THE EMPLOYEES ALLEGED TO
BE ON AN UNLAWFUL STRIKE - BRITISH NORTH AMERICA ACT
(1867) 30-31 VICT., c 3. S.96 - WHETHER BOARD ACTING
IN A MANNER ANALOGOUS TO A SUPERIOR COURT - WHETHER
BOARD TO ASSERT JURISDICTION - S1(1)(M) - WHETHER A
STRIKE - S63 - WHETHER AT A TIME PROHIBITED BY OPERA-
TION OF THE L.R.A. - S36 - EFFECT OF CONTRACTING OUT
OF A PROVISION OF THE L.R.A. - WHETHER BOARD TO EXERCISE
ITS DISCRETION NOT TO ISSUE AN ORDER.

DOVER CORPORATION (CANADA) LTD. TURNBULL ELEVATOR
DIVISION v. JOHN RICHARD BURFIELD, RICHARD HERBERT
YAKELEY INTERNATIONAL UNION OF ELEVATOR CONSTRUCTORS,
LOCAL 50.....

435

TRADE UNION - MEMBERSHIP EVIDENCE - CHANGE OF NAME - FAILURE
TO FILE WITH BOARD COPIES OF THE AMENDED CONSTITUTION
- EVIDENCE OF MEMBERSHIP FILED UNDER OLD NAME - WHETHER
BOARD REQUIREMENTS SATISFIED.

SERVICE EMPLOYEES UNION LOCAL 268 AFFILIATED WITH THE
S.E.I.U. AF OF L., C.I.O., & C.L.C. v. GORDON A. MAC-
EACHERN LIMITED, 21 McCAUL STREET, TORONTO 133, ONT-
ARIO.....

404

TRADE UNION - PROSECUTION - SALE OF A BUSINESS - WHETHER
ASSIGNING WORK TO ONE LOCAL IN DEFERENCE TO ANOTHER
LOCAL OF THE SAME TRADE UNION IS CONTRARY TO S61 OF
THE ACT - EFFECT ON UNION SECURITY CLAUSE - MERGER

OF SEVERAL COMPANIES - S55 - WHETHER PERTINENT UNDER THE CIRCUMSTANCES - DIRECTIVE OF GENERAL PRESIDENT OF THE PARENT TRADE UNION ASSIGNING WORK TO LOCAL - WHETHER RESPONDENTS ACTING IN GOOD FAITH - WHETHER A PRIMA FACIE CASE.

LOCAL 97, WOOD, WIRE AND METAL LATHERS INTERNATIONAL UNION v. NORTHDOWN DRYWALL AND CONSTRUCTION LIMITED AND LOCAL 97 OF THE WOOD, WIRE AND METAL LATHERS INTERNATIONAL UNION v. LOCAL 562 OF THE WOOD, WIRE AND METAL LATHERS INTERNATIONAL UNION.....

428

UNLAWFUL LOCK-OUT - ARBITRATION - S123(2) - WHERE TRADE UNION BARGAINING AGENT AND EMPLOYER ARE IN THE COURSE OF NEGOTIATION FOR A RENEWED COLLECTIVE AGREEMENT - S1(1)(1) - WHETHER THE CLOSING DOWN OF A WORK PROJECT CONSTITUTES AN UNLAWFUL LOCK-OUT IN CIRCUMSTANCES WHERE TRADE UNION MEMBER EMPLOYEES REFUSE TO CONTINUE PROJECT WITHOUT TRADE UNION AUTHORIZATION - S37(1) - WHETHER THE PROCEEDING A SUBTERFUGE CALCULATED TO CAUSE AN INTERPRETATION OF THE RELEVANT PROVISION OF A COLLECTIVE AGREEMENT - S63 - INTENT OF THE LEGISLATURE.

INTERNATIONAL UNION OF ELEVATOR CONSTRUCTORS, LOCAL 50 v. DOVER CORPORATION (CANADA) LTD., TURNBULL ELEVATOR DIVISION.....

540

UNLAWFUL LOCK-OUT - SALE OF A BUSINESS - RELATED EMPLOYER - EMPLOYEES - S123(2) - WHETHER NOTICE OF TERMINATION OF EMPLOYMENT AN UNLAWFUL LOCK-OUT - S1(1)(1) - WHETHER A LOCK-OUT - WHETHER DEPRIVED OF RIGHTS OF MEMBERSHIP OR REPRESENTATION BY A TRADE UNION OR ANY OTHER RIGHT UNDER THE ACT - S55(1)(A)(B) - WHETHER DIVESTING OF A PART OF A BUSINESS A SALE - S55(3) - WHETHER ENTITLED TO GIVE SUCCESSOR EMPLOYER NOTICE TO BARGAIN IN ABSENCE OF A COLLECTIVE AGREEMENT AT THE TIME THE SALE TRANSPIRED - S68 - WHETHER ENTREPRENEURIAL DECISION REQUIRING TERMINATING AN EMPLOYMENT RELATIONSHIP CONTEMPLATED BY THE ACT - INDEPENDENT CONTRACTORS - WHETHER OIL BURNER INSTALLERS RETAINED BY SUCCESSOR COMPANY ARE EMPLOYEES - S1(1)(4) - WHETHER TWO COMPANIES CARRYING ON BUSINESS AS ONE EMPLOYER - EFFECT OF THE NATURE OF THE TRANSACTION.

LOCAL UNION 46 OF THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA v. AUTOMATIC FUELS LIMITED, DEPENDABLE SERVICE.....

515

UNLAWFUL STRIKE - COMBINED EFFECT OF S63(2) AND S102(3) -
 EFFECT OF DISREGARDING THE TIME LIMITS EXPRESSED UNDER
 S102(3) - WHETHER STRIKE UNLAWFUL - S82 - BOARD DISCRE-
 TION - CRITERIA REVIEWED AND FACTORS CONSIDERED IN THE
 EXERCISE OF THE BOARD'S DISCRETION - WHETHER THE BOARD'S
 DISCRETION NOT TO ISSUE A DECLARATION EXERCISED.

QUIGLEY CONSTRUCTION COMPANY LIMITED v. INTERNATIONAL
 UNION OF OPERATING ENGINEERS, LOCAL 793.....

526

ERRATUM

ON PAGE II OF "CASES REPORTED" IN THE MARCH 1972 REPORT REMOVE:

"OTTAWA BOARD OF EDUCATION RE C.U.P.E. AND N.A.B.E.T.
 AND GROUP OF EMPLOYEES.....P. 287".

ON PAGE VIII OF "INDEX OF CASES" REMOVE:

"EMPLOYEES - BARGAINING UNIT - SCHOOL BOARD UNIT - AGREEMENT
 OF THE PARTIES - OFFICE, CLERICAL, AND TECHNICAL EM-
 PLOYEES - REGULAR AND PART TIME.

THE CANADIAN UNION OF PUBLIC EMPLOYEES v. THE OTTAWA
 BOARD OF EDUCATION v. NATIONAL ASSOCIATION OF BROAD-
 CAST EMPLOYEES AND TECHNICIANS AFL-CIO-CLC v. GROUP
 OF EMPLOYEES.....P. 287".

FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

9. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN SIXTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON SEPTEMBER 20, 1971, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 92(2)(J) OF THE LABOUR RELATIONS ACT TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

10. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

11. BOARD MEMBER F. W. MURRAY DOES NOT CONCUR IN THE ABOVE FINDINGS AND DISSENTS FROM THIS DECISION FOR REASONS TO BE GIVEN IN WRITING.

201-70-M: GEORGE DYKHUIS (APPLICANT) V. UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA AND ITS LOCAL 546 (RESPONDENT TRADE UNION) V. CANADIAN WESTINGHOUSE COMPANY LIMITED (RESPONDENT EMPLOYER).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS O. HODGES AND H. F. IRWIN.

APPEARANCES AT THE HEARING: GEORGE DYKHUIS, WILLIAM R. HERRIDGE, Q.C. AND G. VANDEZANDE FOR THE APPLICANT; R. RUSSELL AND JOHN LAPETRIE FOR THE RESPONDENT TRADE UNION; D. A. KAY FOR THE RESPONDENT EMPLOYER.

DECISION OF VICE-CHAIRMAN RORY F. EGAN AND BOARD MEMBER H.F. IRWIN: APRIL 4, 1972.

1. THE NAME "THE UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA AND ITS LOCAL 546" APPEARING IN THE STYLE OF CAUSE OF THIS APPLICATION AS THE NAME OF THE RESPONDENT TRADE UNION IS AMENDED TO READ: "UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA AND ITS LOCAL 546".

2. THIS IS AN APPLICATION BROUGHT UNDER THE PROVISIONS OF SECTION 39 OF THE LABOUR RELATIONS ACT.

3. THE RESPONDENT TRADE UNION MADE A PRELIMINARY MOTION FOR DISMISSAL ON THE GROUNDS THAT THE APPLICANT HAD NOT PAID DUES TO THE UNION SINCE CANCELLING A DUES DEDUCTION AUTHORIZATION IN MARCH OF 1971.

4. THE RELEVANT PROVISIONS OF THE COLLECTIVE AGREEMENT IN EFFECT AT THE TIME THE APPLICATION WAS MADE READ AS FOLLOWS:

ARTICLE 23

DEDUCTION OF UNION DUES

23.01 THE COMPANY AGREES, DURING THE TERM OF THIS AGREEMENT, AS AUTHORIZED IN WRITING BY EACH EMPLOYEE, BUT NOT OTHERWISE, TO DEDUCT EVERY TWO WEEKS FROM SUCH EMPLOYEE'S PAY CHEQUE AN AMOUNT EQUAL TO UNION DUES, WHICH WILL BE REMITTED TO THE AUTHORIZED REPRESENTATIVE OF THE LOCAL UNION. ANY SUCH AUTHORIZATION SHALL BE SIGNED BY EACH EMPLOYEE AND SHALL BE ON A FORM SUBMITTED BY THE UNION TO THE COMPANY FOR APPROVAL. THE DEDUCTION OF SUCH DUES SHALL NOT COMMENCE UNTIL SEVEN DAYS AFTER THE RECEIPT BY THE COMPANY OF THE AUTHORIZATION.

23.02 ANY EMPLOYEE HIRED OR ENTERING THE BARGAINING UNIT DURING THE TERM OF THIS AGREEMENT WILL BE REQUIRED WITHIN 30 DAYS AFTER THE DATE OF SUCH HIRING OR ENTRY TO COMPLETE A FORM (AS SET OUT IN 23.01 ABOVE) ASSIGNING TO THE UNION THROUGH PAYROLL DEDUCTIONS AN AMOUNT EQUIVALENT TO UNION DUES. THE SAME REQUIREMENTS SHALL APPLY TO ANY PRESENT EMPLOYEE WITHIN 30 DAYS AFTER THE DATE OF THIS AGREEMENT FOR WHOM NO SUCH AUTHORIZATION FORM IS ON RECORD WITH THE COMPANY.

23.03 AN EMPLOYEE SHALL HAVE THE RIGHT TO CANCEL SUCH AUTHORIZATION UPON WRITTEN NOTICE TO THE COMPANY AT ANY TIME WITHIN A PERIOD OF TEN DAYS PRIOR TO THE EXPIRY DATE OF THIS AGREEMENT.

5. THE APPLICANT HAD TAKEN ADVANTAGE OF THE PROVISIONS OF SECTION 23.03. THIS, HOWEVER, PROVIDES ONLY PARTIAL RELIEF FROM THE REQUIREMENT TO PAY DUES OR CONTRIBUTIONS TO THE TRADE UNION. IN OUR OPINION, THE APPLICANT IS ENTITLED TO SEEK THE FULL RELIEF AVAILABLE UNDER THE ACT.

6. THE MOTION FOR DISMISSAL IS THEREFORE DENIED AND THE MATTER IS REFERRED TO THE REGISTRAR TO BE LISTED FOR CONTINUATION OF HEARING OF THE MERITS OF THE APPLICATION.

DECISION OF BOARD MEMBER O. HODGES: APRIL 4, 1972.

I DISSENT.

THE RESPONDENT UNION REQUESTED AN OPPORTUNITY TO DEAL FURTHER WITH THE MATTER OF THE PRELIMINARY OBJECTION THAT IT RAISED.

SINCE THE QUESTION OF MERITS REMAINS TO BE DEALT WITH AT A CONTINUATION OF THE HEARING, MY VIEW IS THAT THE BOARD SHOULD, AT THAT TIME, HEAR SUCH ADDITIONAL EVIDENCE OR REPRESENTATIONS AS THE RESPONDENT UNION MAY WISH TO PRESENT, BEFORE PROCEEDING WITH THE MERITS. I CANNOT, THEREFORE, JOIN WITH THE MAJORITY IN DISPOSING OF THE PRELIMINARY MATTER AT THIS TIME.

1792-71-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. MERCHANTS SPEEDY DELIVERY LIMITED (RESPONDENT) V. TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL 880 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (INTERVENER).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS A. MAIN AND J. E. C. ROBINSON, Q.C.

APPEARANCES AT THE HEARING: EDWARD VANDER KLOET AND C. JOHN VANDERLAAN FOR THE APPLICANT; NO ONE APPEARING FOR THE RESPONDENT; I. J. THOMSON FOR THE INTERVENER.

DECISION OF THE BOARD: MAY 1, 1972.

1. THE NAME "MERCHANTS SPEEDY DELIVERY LTD." APPEARING IN THE STYLE OF CAUSE OF THIS APPLICATION AS THE NAME OF THE RESPONDENT IS AMENDED TO READ: "MERCHANTS SPEEDY DELIVERY LIMITED".
2. THIS IS AN APPLICATION FOR CERTIFICATION IN WHICH THE JURISDICTION OF THE BOARD TO ENTERTAIN THE APPLICATION WAS CHALLENGED ON THE GROUNDS THAT THE RESPONDENT COMPANY IS ENGAGED IN INTERNATIONAL OPERATIONS.
3. THERE IS NO DISPUTE THAT THE RESPONDENT'S UNDERTAKING INVOLVES REGULAR DELIVERY TRIPS BETWEEN WINDSOR, ONTARIO AND DETROIT IN THE STATE OF MICHIGAN BY EMPLOYEES OF THE RESPONDENT USING ITS VEHICLES UNDER EXTRA-PROVINCIAL OPERATING LICENCE No. X - 1591.
4. IN VIEW OF THE FOREGOING AND HAVING REGARD TO THE PROVISIONS OF SECTION 92(10)(A) OF THE BRITISH NORTH AMERICA ACT (1867) 30-31 VICT., C. 3, WE FIND THAT THE BOARD IS WITHOUT JURISDICTION TO DEAL WITH THE APPLICATION.
5. THE APPLICATION IS ACCORDINGLY DISMISSED.

1830-72-R: SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, LOCAL UNION 540 (APPLICANT) v. SUBURBAN METAL INDUSTRIES LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: O.B. SHIME, VICE-CHAIRMAN, AND BOARD MEMBERS D.B. ARCHER AND J.D. BELL.

APPEARANCES AT THE HEARING: RONALD S. TAYLOR AND GORDON B. MCKELLAR FOR THE APPLICANT; RAY A. WERRY AND C.M. LAVEN FOR THE RESPONDENT; JEFFREY S. WHALLEY AND JOHN CORBETT FOR THE GROUP OF EMPLOYEES.

DECISION OF THE BOARD: MAY 1, 1972.

1. THE NAME "SUBURBAN METAL INDUSTRIES LTD." APPEARING IN THE STYLE OF CAUSE OF THIS APPLICATION AS THE NAME OF THE RESPONDENT IS AMENDED TO READ: "SUBURBAN METAL INDUSTRIES LIMITED".
2. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(N) OF THE LABOUR RELATIONS ACT.
3. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT SCARBOROUGH, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.
4. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN SIXTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON APRIL 18, 1972, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 92(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.
5. SUBSEQUENT TO THE DATE OF THE MAKING OF THE APPLICATION AND PRIOR TO THE TERMINAL DATE, A STATEMENT OF DESIRE WAS FILED IN THIS MATTER BY A GROUP OF EMPLOYEES. HAVING REGARD TO THE EVIDENCE THE BOARD IS SATISFIED AS TO THE CIRCUMSTANCES CONCERNING THE ORIGINATION AND CIRCULATION OF THE MATERIAL FILED AND THE MANNER IN WHICH EACH OF THE SIGNATURES WAS OBTAINED. THE STATEMENT OF DESIRE CASTS DOUBT ON THE TRUE WISHES OF A NUMBER OF EMPLOYEES ON WHOSE BEHALF MEMBERSHIP EVIDENCE HAS BEEN SUBMITTED, AND INDICATES THAT LESS THAN SIXTY-FIVE PER CENT OF THE EMPLOYEES IN THE BARGAINING UNIT AND ON WHOSE BEHALF MEMBERSHIP EVIDENCE HAS BEEN FILED REMAIN DESIROUS OF REPRESENTATION BY A TRADE UNION, WHILE OTHERS ON WHOSE BEHALF MEMBERSHIP EVIDENCE HAS BEEN FILED ARE UNCERTAIN. IN THESE CIRCUMSTANCES THE BOARD FEELS THAT

IT IS PROPER TO EXERCISE ITS DISCRETION PURSUANT TO SECTION 7(2) OF THE LABOUR RELATIONS ACT AND ORDER THAT A REPRESENTATION VOTE BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT.

6. ALL EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

7. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BE REPRESENTED BY THE APPLICANT IN THEIR EMPLOYMENT RELATIONS WITH THE RESPONDENT.

8. THE MATTER IS REFERRED TO THE REGISTRAR.

1715-71-R: INTERNATIONAL BROTHERHOOD OF PULP, SULPHITE AND PAPER MILL WORKERS (APPLICANT) V. CHAMPLAIN FOREST PRODUCTS LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: O.B. SHIME, VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND H.J.F. ADE.

APPEARANCES AT THE HEARING: CHRIS MONK FOR THE APPLICANT; MICHAEL A. EUSTALE, WILLIAM DYER AND ROBERT BLACK FOR THE RESPONDENT; NO ONE APPEARING FOR THE GROUP OF EMPLOYEES.

DECISION OF THE BOARD: MAY 1, 1972.

1. THE NAME "CHAMPLAIN FOREST PRODUCTS" APPEARING IN THE STYLE OF CAUSE OF THIS APPLICATION AS THE NAME OF THE RESPONDENT IS AMENDED TO READ: "CHAMPLAIN FOREST PRODUCTS LIMITED".

2. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(N) OF THE LABOUR RELATIONS ACT.

3. FOR THE REASONS GIVEN ORALLY AT THE HEARING THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT NORTH BAY, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

4. IN THIS CASE THE RESPONDENT ALLEGED THAT THERE WAS A BUILD-UP OF EMPLOYEES AND THAT THE PLANT AT NORTH BAY WOULD BE IN FULL PRODUCTION BY JULY 1, 1972, WHEN IT IS ANTICIPATED THERE WILL BE FIFTY-FIVE EMPLOYEES. PRESENTLY THERE ARE EMPLOYEES IN ALL THE OCCUPATIONAL CLASSIFICATIONS. AT THE DATE OF THE MAKING OF THE APPLICATION THERE

WERE THIRTY EMPLOYEES AND AT THE DATE OF THE HEARING THERE WERE APPROXIMATELY THIRTY-FIVE EMPLOYEES. ACCORDINGLY, THERE WAS IN EXCESS OF FIFTY PER CENT OF THE ANTICIPATED COMPLEMENT OF EMPLOYEES AT THE DATE OF THE MAKING OF THE APPLICATION.

5. IN BUILD-UP SITUATIONS THE BOARD ATTEMPTS TO BALANCE THE RIGHTS OF PERSONS PRESENTLY EMPLOYED TO COLLECTIVE BARGAINING AND THE RIGHT OF FUTURE EMPLOYEES TO SELECT A BARGAINING AGENT OF THEIR OWN CHOICE. THE REFUSAL TO CERTIFY OUTRIGHT DEPRIVES OR DELAYS EMPLOYEES IN THEIR RIGHT TO COLLECTIVE BARGAINING. ON THE OTHER HAND, AN IMMEDIATE REPRESENTATION VOTE OR CERTIFICATION WILL PREVENT FUTURE EMPLOYEES FROM PARTICIPATING IN THE SELECTION OF A BARGAINING AGENT. TO BALANCE THESE COMPETING INTERESTS WHERE THE BOARD HAS FOUND A BUILD-UP SITUATION IT HAS DIRECTED A REPRESENTATION VOTE WHERE IT APPEARED THAT THERE WAS A SUBSTANTIVE OR REPRESENTATIVE SEGMENT OF THE WORK FORCE EMPLOYED. SEE E.G., LOCAL 2693 LUMBER AND SAWMILL WORKERS UNION UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA AND M.L. FRANT AND PETER WASELOVICH (CNR FORT FRANCES PORT ARTHUR MILL) 57 CLLC 618, C.L.S. 76-539 (OLRB).

6. THE BOARD HAS ALSO DETERMINED IN NUMEROUS CASES THAT A SUBSTANTIVE AND REPRESENTATIVE SEGMENT OF THE WORK FORCE IS PRESENT WHEN THE NUMBER OF EMPLOYEES HAS REACHED FIFTY PER CENT OF THE ANTICIPATED COMPLEMENT. AT THAT POINT THE BOARD WILL MAKE ITS ASSESSMENT AND WHERE A BUILD-UP OF EMPLOYEES HAS OCCURRED SUBSEQUENT TO THE DATE OF THE HEARING IT IS USUAL FOR THE BOARD TO ORDER A VOTE WHEN FIFTY PER CENT OF THE ANTICIPATED COMPLEMENT OF EMPLOYEES IS PRESENT.

7. IN THIS CASE SINCE THERE WAS IN EXCESS OF FIFTY PER CENT OF THE ANTICIPATED COMPLEMENT OF EMPLOYEES PRESENT ON THE DATE OF THE MAKING OF THE APPLICATION, THERE IS A SUBSTANTIVE AND REPRESENTATIVE SEGMENT OF THE WORK FORCE PRESENT SO AS TO ENABLE THE ASSESSMENT TO BE MADE AT THE DATE OF THE HEARING. THE APPLICANT PRESENTLY REPRESENTS TWENTY-FIVE OF THE THIRTY EMPLOYEES PRESENT ON THE DATE OF THE MAKING OF THE APPLICATION WHICH WAS IN EXCESS OF EIGHTY-TWO PER CENT OF ALL THE EMPLOYEES. IF WE WERE TO ORDER A REPRESENTATION VOTE AT THIS POINT THE APPLICANT WOULD ONLY REQUIRE A BARE MAJORITY TO RECEIVE OUTRIGHT CERTIFICATION. IN THIS CASE THE APPLICANT HAS FILED MEMBERSHIP EVIDENCE CONSIDERABLY IN EXCESS OF A BARE MAJORITY AND CONSIDERABLY IN EXCESS OF THE SIXTY-FIVE PER CENT REQUIRED FOR OUTRIGHT CERTIFICATION AND ACCORDINGLY WE DO NOT FEEL THAT THIS IS A CASE WHERE CERTIFICATION SHOULD BE POSTPONED.

8. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN SIXTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON MARCH 17, 1972, THE TERMINAL DATE

FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 92(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

9. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

1327-71-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE DOCTORS HOSPITAL (RESPONDENT) V. INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796 (INTERVENER).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND O. HODGES.

APPEARANCES AT THE HEARING: A. RYDER, R. CHISHOLM AND HUGH LENNON FOR THE APPLICANT; C. G. RIGGS AND L. O'NEILL FOR THE RESPONDENT; A. GOLDEN AND J. SULLIVAN FOR THE INTERVENER.

DECISION OF THE BOARD: MAY 1, 1972.

1. THIS IS AN APPLICATION FOR CERTIFICATION WHEREIN THE APPLICANT APPLIED ON DECEMBER 1, 1971 AND REQUESTED THAT A PRE-HEARING REPRESENTATION VOTE BE TAKEN. THE INTERVENER ASKED THAT THE MAINTENANCE EMPLOYEES, WHO WERE INCLUDED IN THE BARGAINING UNIT PROPOSED BY THE APPLICANT, BE EXCLUDED FROM THE BARGAINING UNIT IN THIS MATTER ON THE GROUNDS THAT THE MAINTENANCE EMPLOYEES WERE COVERED BY A COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERVENER WHICH REMAINED IN EFFECT UNTIL MARCH 31, 1972.

2. THE APPLICANT CHALLENGED THE RIGHT OF THE INTERVENER TO REPRESENT THE MAINTENANCE EMPLOYEES AT THE TIME THE COLLECTIVE AGREEMENT WAS ENTERED INTO BETWEEN THE RESPONDENT AND THE INTERVENER. THE BOARD ACCORDINGLY DIRECTED THAT THE REGISTRAR LIST THIS MATTER FOR HEARING FOLLOWING THE TAKING OF THE REPRESENTATION VOTE TO DETERMINE, UNDER THE PROVISIONS OF SECTION 52 OF THE ACT, WHETHER THE INTERVENER WAS ENTITLED TO REPRESENT EMPLOYEES IN THE RESPONDENT'S MAINTENANCE DEPARTMENT ON JUNE 14, 1971, THE DATE THE COLLECTIVE AGREEMENT WAS ENTERED INTO.

3. THE EVIDENCE ESTABLISHED THAT THE INTERVENER WAS CERTIFIED AS BARGAINING AGENT OF ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS EMPLOYED BY THE RESPONDENT AND WAS A PARTY TO A COLLECTIVE AGREEMENT WITH THE RESPONDENT COVERING SUCH EMPLOYEES. EARLY IN 1971 THE INTERVENER WAS ASKED BY EMPLOYEES IN THE RESPONDENT'S MAINTENANCE DEPARTMENT TO REPRESENT THEM. THE INTERVENER PROCEEDED TO SIGN UP A LARGE MAJORITY OF THE RESPONDENT'S MAINTENANCE EMPLOYEES.

4. ON MARCH 19, 1971 THE INTERVENER WROTE TO THE RESPONDENT AND ADVISED THAT THE INTERVENER REPRESENTED 90 PER CENT OF THE MAINTENANCE EMPLOYEES OF THE RESPONDENT AND REQUESTED VOLUNTARY RECOGNITION. THE RESPONDENT ASKED FOR FURTHER ASSURANCES AND ON MARCH 30, 1971 A PETITION ADDRESSED TO THE RESPONDENT WAS SIGNED BY TEN OF THE RESPONDENT'S MAINTENANCE EMPLOYEES WHEREIN THEY REQUESTED THAT THE INTERVENER REPRESENT THEM AND ACT AS THEIR BARGAINING AGENT. THERE WERE ELEVEN MAINTENANCE EMPLOYEES IN THE RESPONDENT'S MAINTENANCE DEPARTMENT AT THAT TIME. FOLLOWING DISCUSSIONS BETWEEN THE INTERVENER AND THE RESPONDENT AND AFTER BEING SHOWN THE SIGNED MEMBERSHIP CARDS AND THE PETITION, THE RESPONDENT ADVISED THAT IT WAS PREPARED TO EXTEND VOLUNTARY RECOGNITION TO THE INTERVENER WITH RESPECT TO THE MAINTENANCE EMPLOYEES. THE RESPONDENT ALSO ADVISED THAT IT WOULD FORMALIZE THE RECOGNITION IN WRITING. HOWEVER, BECAUSE OF DIFFICULTIES CAUSED BY ABSENCES OF SOME OF THE RESPONDENT'S OFFICIALS, ETC. THERE WAS A DELAY IN REDUCING THE VOLUNTARY RECOGNITION AGREEMENT TO WRITING. THE EMPLOYEES BECAME RESTLESS BECAUSE OF THE DELAY AND THE APPLICANT UNION WAS APPROACHED AND ASKED TO REPRESENT THEM. TEN OF THE MAINTENANCE EMPLOYEES SIGNED MEMBERSHIP CARDS IN THE APPLICANT UNION BUT THESE CARDS WERE NOT DELIVERED TO THE APPLICANT UNION UNTIL WELL AFTER THE COLLECTIVE AGREEMENT REFERRED TO ABOVE WAS SIGNED. AS STATED TO AN OFFICIAL OF THE APPLICANT, THE MAINTENANCE EMPLOYEES WANTED A UNION TO REPRESENT THEM AND THEY STILL HOPED THAT THE RESPONDENT WOULD GIVE VOLUNTARY RECOGNITION TO THE INTERVENER IN WRITING. THE MAINTENANCE EMPLOYEES MADE IT CLEAR THAY BY SIGNING THE APPLICANT'S MEMBERSHIP CARDS THEY WERE HEDGING THEIR BETS BY KEEPING AN OPTION OPEN.

5. ON MAY 25, 1971 THE RESPONDENT FINALLY GAVE VOLUNTARY RECOGNITION TO THE INTERVENER IN WRITING. AFTER SEVERAL NEGOTIATING MEETINGS, THE RESPONDENT AND THE INTERVENER ENTERED INTO A COLLECTIVE AGREEMENT ON JUNE 14, 1971 COVERING THE MAINTENANCE DEPARTMENT EMPLOYEES. THIS COLLECTIVE AGREEMENT WAS IN EFFECT FROM APRIL 1, 1971 TO MARCH 31, 1972.

6. THE APPLICANT APPLIED TO BE CERTIFIED FOR ALL EMPLOYEES OF THE RESPONDENT INCLUDING THE MAINTENANCE EMPLOYEES ON DECEMBER 1, 1971 AND THE APPLICANT CHALLENGED THE INTERVENER'S RIGHT TO REPRESENT THE MAINTENANCE EMPLOYEES ON THE GROUNDS THAT THIS RIGHT WAS BASED ON MEMBERSHIP CARDS AND SINCE THE APPLICANT ALSO HAD MEMBERSHIP CARDS SIGNED BY THE SAME EMPLOYEES THE INTERVENER'S RIGHT TO REPRESENT THE EMPLOYEES WAS NOT EXCLUSIVE AND THE RIGHT TO REPRESENT THE EMPLOYEES WAS SHARED BY THE APPLICANT. THE APPLICANT ALSO ARGUED THAT THE COLLECTIVE AGREEMENT THAT WAS SIGNED ON JUNE 14, 1971 WAS SIGNED IN THE SHADOW OF THE APPLICANT'S ORGANIZING CAMPAIGN.

7. SECTION 52(1) AND SECTION 52(3) OF THE ACT READ AS FOLLOWS:

52(1) WHERE AN EMPLOYER AND A TRADE UNION THAT HAS NOT BEEN CERTIFIED AS THE BARGAINING AGENT FOR A BARGAINING UNIT OF EMPLOYEES OF THE EMPLOYER ENTER INTO A COLLECTIVE AGREEMENT, OR A RECOGNITION AGREEMENT AS PROVIDED FOR IN SUBSECTION 3 OF SECTION 15, THE BOARD MAY, UPON THE APPLICATION OF ANY EMPLOYEE IN THE BARGAINING UNIT OR OF A TRADE UNION REPRESENTING ANY EMPLOYEE IN THE BARGAINING UNIT, DURING THE FIRST YEAR OF THE PERIOD OF TIME THAT THE FIRST COLLECTIVE AGREEMENT BETWEEN THEM IS IN OPERATION OR, IF NO COLLECTIVE AGREEMENT HAS BEEN ENTERED INTO, WITHIN ONE YEAR FROM THE SIGNING OF SUCH RECOGNITION AGREEMENT, DECLARE THAT THE TRADE UNION WAS NOT, AT THE TIME THE AGREEMENT WAS ENTERED INTO, ENTITLED TO REPRESENT THE EMPLOYEES IN THE BARGAINING UNIT.

(3) ON AN APPLICATION UNDER SUBSECTION 1, THE ONUS OF ESTABLISHING THAT THE TRADE UNION WAS ENTITLED TO REPRESENT THE EMPLOYEES IN THE BARGAINING UNIT AT THE TIME THE AGREEMENT WAS ENTERED INTO RESTS ON THE PARTIES TO THE AGREEMENT.

8. ALTHOUGH THE CHALLENGE TO THE INTERVENER'S STATUS TO REPRESENT THE MAINTENANCE EMPLOYEES WAS MADE DURING THE FIRST YEAR OF THE OPERATION OF THE COLLECTIVE AGREEMENT, WE ARE SATISFIED THAT, AT THE TIME THE COLLECTIVE AGREEMENT WAS ENTERED INTO, THE INTERVENER WAS "ENTITLED TO REPRESENT THE EMPLOYEES IN THE BARGAINING UNIT". THE MAJORITY OF THE MAINTENANCE EMPLOYEES IN THE BARGAINING UNIT HAD NOT ONLY SIGNED MEMBERSHIP CARDS BUT HAD ALSO SIGNED THE PETITION REFERRED TO ABOVE. ALTHOUGH THE MAINTENANCE EMPLOYEES HAD ALSO SIGNED MEMBERSHIP CARDS IN THE APPLICANT THEY KNEW THAT SUCH CARDS HAD NOT BEEN TURNED OVER TO THE APPLICANT AND WERE PREPARED TO DELAY THE DELIVERY OF SUCH CARDS TO THE APPLICANT IN THE HOPE AND ANTICIPATION OF A VOLUNTARY COLLECTIVE AGREEMENT WITH THE INTERVENER. WE ARE ALSO SATISFIED ON THE EVIDENCE THAT THE MAJORITY OF THE MAINTENANCE EMPLOYEES APPROVED THE TERMS OF THE COLLECTIVE AGREEMENT WITH THE INTERVENER AT THE TIME IT WAS SIGNED.

9. THIS IS NOT A CASE WHERE THE COLLECTIVE AGREEMENT WAS ENTERED INTO IN THE SHADOW OF THE APPLICANT'S ORGANIZING CAMPAIGN. INDEED, THE VERY OPPOSITE IS TRUE. THE APPLICANT'S CAMPAIGN WAS COMMENCED AFTER THE RESPONDENT HAD VERBALLY AGREED TO RECOGNIZE THE INTERVENER. THE DELAY WHICH TOOK PLACE CAUSED THE EMPLOYEES TO BRING IN THE APPLICANT UNION, APPARENTLY IN THE HOPE OF CAUSING ADDITIONAL PRESSURE ON THE RESPONDENT TO ENTER INTO AN AGREEMENT WITH THE INTER-

VENER. THE EMPLOYEES AT ALL TIMES GAVE PRECEDENCE TO A COLLECTIVE AGREEMENT WITH THE INTERVENER AND GAVE APPROVAL TO ITS TERMS. THIS TRANSACTION CANNOT BE PROPERLY CHARACTERIZED AS A "SWEATHEART DEAL". THE MAINTENANCE EMPLOYEES WERE IN CONTROL OF THE SITUATION THROUGH-OUT.

10. WE THEREFORE FIND THAT SINCE THE INTERVENER HAD AS MEMBERS A MAJORITY OF THE MAINTENANCE EMPLOYEES IN THE BARGAINING UNIT ON JUNE 14, 1971, IT WAS THEREFORE ENTITLED TO REPRESENT THE MAINTENANCE EMPLOYEES AT THE TIME THE COLLECTIVE AGREEMENT WAS ENTERED INTO. THE COLLECTIVE AGREEMENT CONTINUED IN EFFECT UNTIL MARCH 31, 1972 AND THIS APPLICATION IS THEREFORE UNTIMELY IN SO FAR AS IT RELATES TO THE MAINTENANCE EMPLOYEES (SEE SECTION 5(4) OF THE ACT).

11. THE BOARD THEREFORE FINDS THAT THE MAINTENANCE EMPLOYEES OF THE RESPONDENT WERE NOT ENTITLED TO VOTE IN THE REPRESENTATION VOTE IN THIS MATTER.

12. HAVING REGARD TO ALL THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER DATED FEBRUARY 9, 1972, THE BOARD FURTHER FINDS THAT SAM GOOLJAR DOES NOT EXERCISE MANAGERIAL FUNCTIONS AND IS NOT EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE ACT AND IS AN EMPLOYEE OF THE RESPONDENT INCLUDED IN THE VOTING CONSTITUENCY AND WAS THEREFORE ELIGIBLE TO VOTE IN THE REPRESENTATION VOTE IN THIS CASE.

13. THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT STANLEY SCOTT EXERCISES MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE ACT AND ACCORDINGLY WAS NOT AN EMPLOYEE OF THE RESPONDENT INCLUDED IN THE VOTING CONSTITUENCY AND WAS THEREFORE NOT ELIGIBLE TO VOTE IN THIS MATTER.

14. THE BOARD DIRECTS THE REGISTRAR TO CAUSE THE BALLOTS CAST BY ALL THOSE ELIGIBLE TO VOTE TO BE COUNTED AND REPORT TO THE BOARD.

1703-71-R: SERVICE EMPLOYEES UNION LOCAL 268 AFFILIATED WITH THE S.E.I.U. AF OF L., C.I.O., & C.L.C. (APPLICANT) v. GORDON M. MAC-EACHERN LIMITED, 21 McCaUL STREET, TORONTO 133, ONTARIO (RESPONDENT).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS D. B. ARCHER AND J. E. C. ROBINSON, Q.C.

APPEARANCES AT THE HEARING: J. H. NICHOLLS FOR THE APPLICANT; R. C. FILION AND J. R. FINLAY FOR THE RESPONDENT.

DECISION OF VICE-CHAIRMAN RORY F. EGAN AND BOARD MEMBERS J. E. C. ROBINSON, Q.C.: MAY 2, 1972.

1. THIS IS AN APPLICATION FOR CERTIFICATION IN WHICH THE APPLICANT WAS REQUIRED TO PROVE ITS STATUS AS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(N) OF THE LABOUR RELATIONS ACT.

2. ON THE QUESTION OF STATUS, MR. J. H. NICHOLLS, AN OFFICER OF THE ONTARIO PROVINCIAL JOINT COUNCIL NO. 22 SERVICE EMPLOYEES INTERNATIONAL UNION, TESTIFIED THAT THE APPLICANT LOCAL HAD FORMERLY BEEN A LOCAL UNION THE BUILDING SERVICE EMPLOYEES' INTERNATIONAL UNION WITH THE SAME NUMERICAL DESIGNATION. MR. NICHOLLS STATED THAT IN 1968 THE NAME OF BUILDING SERVICE EMPLOYEES' INTERNATIONAL UNION HAD BEEN CHANGED TO SERVICE EMPLOYEES INTERNATIONAL UNION AND THAT OF THE APPLICANT LOCAL TO SERVICE EMPLOYEES UNION LOCAL 268. MR. NICHOLLS FURTHER STATED THAT COPIES OF THE AMENDED CONSTITUTION AND BYLAWS OF SERVICE EMPLOYEES UNION LOCAL 268 HAD BEEN FORWARDED TO THE REGISTRAR. AT THE SAME TIME, THE REGISTRAR WAS NOTIFIED THAT BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION LOCAL 268 HAD CHANGED ITS NAME TO SERVICE EMPLOYEES UNION LOCAL 268. COPIES OF THE AMENDED CONSTITUTION, HOWEVER, WERE NOT FILED AT THE HEARING.

3. A QUESTION ALSO ARISES WITH RESPECT TO THE MEMBERSHIP EVIDENCE FILED IN THIS APPLICATION. AN EXAMINATION OF THE DOCUMENTS FILED AS EVIDENCE OF MEMBERSHIP IN THE APPLICANT SHOWS THAT THEY COMPRISE COMBINED APPLICATIONS FOR MEMBERSHIP AND RECEIPTS. THE APPLICATIONS, HOWEVER, ARE FOR MEMBERSHIP IN BUILDING SERVICE EMPLOYEES' INTERNATIONAL UNION LOCAL 268 AND NOT FOR MEMBERSHIP IN THE APPLICANT, SERVICE EMPLOYEES UNION LOCAL 268.

4. THIS OBVIOUS DEFECT IN THE DOCUMENTS FILED AS EVIDENCE OF MEMBERSHIP RENDERS THEM INEFFECTIVE AS PROOF OF MEMBERSHIP IN THE APPLICANT. IN THE CIRCUMSTANCES, IT BECOMES UNNECESSARY FOR THE BOARD TO DEAL WITH THE QUESTION OF STATUS SINCE, IN ANY EVENT, THE EVIDENCE OF MEMBERSHIP WOULD REMAIN DEFECTIVE.

5. THE APPLICATION IS ACCORDINGLY DISMISSED.

DECISION OF BOARD MEMBER D. B. ARCHER: MAY 2, 1972.

THE BUILDING SERVICE EMPLOYEES' INTERNATIONAL UNION CHANGED ITS NAME AT A CONSTITUTIONAL CONVENTION TO SERVICE EMPLOYEES' INTERNATIONAL UNION. THE NECESSARY DOCUMENTS OUTLINING THE CHANGE WERE FILED WITH THE BOARD AND A NUMBER OF CERTIFICATIONS HAVE BEEN GRANTED IN THE NEW NAME. ALSO A NUMBER OF CONTRACTS HAVE BEEN RENEWED CONTAINING THE NEW NAME.

AN ADDED COMPLICATION IN THE INSTANT CASE IS THE USE OF OLD CARDS USING THE NAME BUILDING SERVICE EMPLOYEES' INTERNATIONAL UNION AS EVIDENCE OF MEMBERSHIP. IT IS RATHER UNFORTUNATE THAT AFTER THREE YEARS, THE OLD CARDS WERE NOT DISCHARGED AND NEW ONES USED, I DON'T THINK THE MERE PASSAGE OF TIME SHOULD INVALIDATE THE CARDS. THE NEW UNION IS THE SUCCESSOR TO THE OLD UNION. THEREFORE, THE CARDS FOLLOW IN THE SAME CATEGORY AND I WOULD HAVE ALLOWED THEM TO STAND AND WOULD HAVE CERTIFIED THE UNION.

1803-71-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. K. M. W. PRODUCTS LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND F. W. MURRAY.

APPEARANCES AT THE HEARING: D. M. STOREY, A. SHARPE AND P. KENNEDY FOR THE APPLICANT; D. J. MCKILLOP, Q.C., AND J. KUCHYT FOR THE RESPONDENT; J. E. GARRATT FOR THE OBJECTORS.

DECISION OF THE BOARD: MAY 2, 1972.

1. THE NAME "KUCHYT METAL WORKS PRODUCTS LTD." APPEARING IN THE STYLE OF CAUSE OF THIS APPLICATION AS THE NAME OF THE RESPONDENT IS AMENDED TO READ: "K. M. W. PRODUCTS LIMITED".
2. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(N) OF THE LABOUR RELATIONS ACT.
3. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT FORT ERIE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.
4. FOR PURPOSES OF CLARITY THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT DRAFTSMEN ARE PART OF THE OFFICE STAFF AND ARE NOT INCLUDED IN THE BARGAINING UNIT.
5. THE RESPONDENT FILED A LIST WHICH CONTAINS THE NAMES OF 22 EMPLOYEES WHO ARE INCLUDED IN THE BARGAINING UNIT FOR PURPOSES OF THE COUNT. THE APPLICANT SUBMITTED EVIDENCE OF MEMBERSHIP FOR 15 PERSONS WHOSE NAMES APPEAR ON THE SAID LIST. THERE WERE ALSO FILED WITH THE BOARD SIX INDIVIDUAL STATEMENTS OF DESIRE EXPRESSING OPPOSITION TO THE APPLICATION (HEREINAFTER REFERRED TO AS PETITIONS) WHICH ARE SIGNED BY PERSONS WHOSE NAMES APPEAR ON THE RESPONDENT'S

LIST AND WHO ARE CLAIMED IN MEMBERSHIP BY THE APPLICANT. IF THE BOARD WERE TO GIVE WEIGHT TO THE SAID PETITIONS THE APPLICANT WOULD HAVE UNQUALIFIED EVIDENCE OF MEMBERSHIP FOR LESS THAN THE 65 PER CENT REQUIRED FOR OUTRIGHT CERTIFICATION. THE BOARD ACCORDINGLY MADE ITS USUAL INQUIRY WITH REGARD TO THE ORIGINATION, PREPARATION AND CIRCULATION OF THE SAID PETITIONS. ALL SIX OF THE EMPLOYEES WHO FILED PETITIONS IN OPPOSITION TO THE APPLICATION TESTIFIED AT THE HEARING OF THE APPLICATION.

6. ACCORDING TO THE RETURN OF POSTING FORM FILED BY THE PRESIDENT OF THE RESPONDENT, THE NOTICE TO EMPLOYEES OF APPLICATION FOR CERTIFICATION AND OF HEARING (FORM 5) WAS POSTED ON THE PREMISES OF THE RESPONDENT ON APRIL 6, 1972. THE EVIDENCE IS THAT A DAY OR TWO AFTER THE ABOVE NOTICE WAS POSTED JAMES KUCHYT, ONE OF THE TWO MANAGERS OF THE RESPONDENT'S BUSINESS, CALLED A MEETING OF ALL OF THE EMPLOYEES ON THE DAY SHIFT IN THE SHOP DURING THE EMPLOYEES' TEN-MINUTE COFFEE BREAK. ALTHOUGH THERE IS SOME VARIATION IN THE EVIDENCE, IT APPEARS THAT HE REFERRED TO THE APPLICATION FOR CERTIFICATION OF THE APPLICANT AND ADVISED THE EMPLOYEES THAT IT MIGHT BE CHEAPER FOR THE COMPANY TO DISCONTINUE ITS MANUFACTURING OPERATIONS AND BUY THE EQUIPMENT WHICH THE COMPANY PRODUCED AND SIMPLY CARRY ON BUSINESS AS A SALES AND DISTRIBUTION CENTRE. ACCORDING TO THE EVIDENCE THIS MEETING LASTED ONLY A FEW MINUTES. MR. KUCHYT HELD A SIMILAR MEETING IN HIS OFFICE WITH THE EMPLOYEES ON THE NIGHT SHIFT ABOUT THE SAME DATE AND IT WOULD APPEAR THAT HE CONVEYED THE SAME MESSAGE TO THEM. FOUR OF THE EMPLOYEES WHO FILED PETITIONS WITH THE BOARD DID SO A DAY OR TWO AFTER THE MEETINGS CALLED BY MR. KUCHYT.

7. CHARLES CAUGHELL TESTIFIED THAT HE WAS ABSENT FROM WORK DUE TO ILLNESS FROM MARCH 6, 1972 AND THAT HE DID NOT EXPECT TO RETURN TO WORK UNTIL APRIL 24TH. ACCORDING TO HIS EVIDENCE, HOWEVER, HE CAME INTO THE SHOP ON APRIL 10TH TO PICK UP SOME MAIL AND ON THAT OCCASION HE SAW LES KUCHYT, THE OTHER MANAGER OF THE RESPONDENT'S BUSINESS. CAUGHELL TESTIFIED THAT HE HAD HEARD OF THE MEETING IN THE SHOP CALLED BY JAMES KUCHYT AND INQUIRED OF LES KUCHYT ABOUT IT. LES KUCHYT ADVISED HIM TO SEE JOHN GARRATT, WHO WE WOULD MENTION WAS THE REPRESENTATIVE OF THE GROUP OF EMPLOYEE OBJECTORS AT THE BOARD HEARING. CAUGHELL TESTIFIED THAT HE WENT TO GARRATT'S WORK BENCH AND GARRATT (WHO INCIDENTLY IS HIS BROTHER-IN-LAW) TOLD HIM WHAT HAD TRANSPIRED AT THE MEETING. ACCORDING TO CAUGHELL, HE THEN ASKED GARRATT TO WRITE A PETITION IN OPPOSITION TO THE APPLICANT ON HIS (CAUGHELL'S) BEHALF. GARRATT DID SO ON THE SPOT AND CAUGHELL SIGNED IT. CAUGHELL LEFT THE PETITION WITH GARRATT TO MAIL TO THE BOARD.

8. THE EVIDENCE OF JACK HALBERT IS THAT HIS FOREMAN ON THE NIGHT SHIFT, CHARLES SOLEN, APPROACHED HIM APPROXIMATELY A WEEK PRIOR TO THE TIME WHEN THE "GREEN SHEET" (I.E. THE NOTICE TO EMPLOYEES OF APPLICATION

FOR CERTIFICATION) WAS POSTED AND ASKED HIM (HALBERT) IF HE WANTED TO SIGN AGAINST THE UNION. ACCORDING TO HALBERT HE REPLIED THAT HE WOULD THINK ABOUT IT. HALBERT TESTIFIED THAT HE TYPED HIS PETITION AT HOME AND THAT HE PREPARED THE WORDING HIMSELF WITH THE HELP OF HIS WIFE. THIS WAS DONE AFTER THE MEETING WITH JAMES KUCHYT. HALBERT FURTHER TESTIFIED THAT HE SAW A "ROUND-ROBIN" PETITION LYING IN OPEN VIEW ON THE WORK BENCH OF GARRATT AND THAT GARRATT WAS NOT AT HIS BENCH AT THE TIME. WHEN HALBERT SAW THE PETITION, STAN NICKERSON, THE DAY SHIFT FOREMAN, WAS IN THE COMPANY OFFICE WHICH IS RIGHT NEXT TO GARRATT'S WORK BENCH. ALLAN EVERETT ALSO TESTIFIED THAT HE SAW A "ROUND-ROBIN" PETITION LYING UNATTENDED ON THE WORK BENCH OF GARRATT. THE EVIDENCE OF PETER BREDIN IS THAT HE SIGNED A "ROUND-ROBIN" PETITION IN OPPOSITION TO THE APPLICANT AT GARRATT'S WORK BENCH WHEN GARRATT WAS PRESENT. NO "ROUND-ROBIN" PETITION IN OPPOSITION TO THE APPLICATION, HOWEVER, WAS FILED WITH THE BOARD. BREDIN ALSO TESTIFIED THAT GARRATT HELPED HIM PREPARE THE INDIVIDUAL PETITION WHICH WAS FILED WITH THE BOARD. BREDIN'S EVIDENCE IS THAT AFTER SIGNING THE PETITION HE LEFT IT WITH GARRATT TO MAIL TO THE BOARD. THE SAID PETITION WAS PREPARED AND SIGNED AT GARRATT'S WORK BENCH A COUPLE OF DAYS AFTER THE MEETING WITH JAMES KUCHYT.

9. BOTH ALLAN EVERETT AND ROBERT CLIMENHAGE TESTIFIED THAT THEY ORIGINALLY PREPARED THEIR RESPECTIVE INDIVIDUAL PETITIONS WHICH WERE FILED WITH THE BOARD AT THEIR HOMES WITHOUT ANY ASSISTANCE ON APRIL 4, 1970 AND THAT THEY EACH MAILED THEM TO THE BOARD. THEIR EVIDENCE IS THAT THEIR PETITIONS WERE RETURNED TO THEM WITH AN EXPLANATORY LETTER THAT THE BOARD DID NOT AT THAT TIME HAVE AN APPLICATION BEFORE IT RELATING TO THE RESPONDENT. BOTH TESTIFIED THAT THEY RE-MAILED THEIR PETITIONS TO THE BOARD AFTER THE MEETING WITH JAMES KUCHYT.

10. ALTHOUGH BOTH EVERETT AND CLIMENHAGE TESTIFIED THAT THEY PREPARED THE WORDING OF THEIR RESPECTIVE PETITIONS WITHOUT ANY ASSISTANCE (EXCEPT IN THE CASE OF EVERETT BY HIS WIFE) THE LANGUAGE OF BOTH OF THEIR RESPECTIVE PETITIONS BEARS A MARKED SIMILARITY TO THE LANGUAGE WHICH APPEARS IN THE PETITION OF CHARLES CAUGHELL WHICH HE ADMITS WAS PREPARED BY GARRATT. HAVING REGARD TO THE GREAT SIMILARITY IN THE LANGUAGE OF THE THREE PETITIONS, WE ARE SIMPLY UNABLE TO ACCEPT THE EVIDENCE OF EVERETT AND CLIMENHAGE THAT THEY PREPARED THEIR PETITIONS WITHOUT ANY ASSISTANCE. RATHER, WE ARE IMPELLED TO CONCLUDE THAT GARRATT ASSISTED THEM IN DRAWING UP THEIR PETITIONS. IN THE RESULT, DOUBT IS CAST ON ALL OF THE TESTIMONY GIVEN BY EVERETT AND CLIMENHAGE. WE ARE THEREFORE NOT PREPARED TO GIVE WEIGHT TO EITHER OF THEIR PETITIONS.

11. BASED ON ALL THE EVIDENCE, WE FIND THAT JAMES KUCHYT, IN EFFECT, SUGGESTED TO THE EMPLOYEES THAT HE MIGHT CLOSE DOWN THE RE-

SPONDENT'S MANUFACTURING OPERATIONS IN THE EVENT THAT THE APPLICANT BECAME CERTIFIED AS THE BARGAINING AGENT OF THE RESPONDENT. IN OTHER WORDS HE INTIMATED THAT THEIR JOBS MIGHT BE IN JEOPARDY IF THE APPLICANT BECAME CERTIFIED. WE FURTHER HAVE THE EVIDENCE THAT LES KUCHYT REFERRED CAUGHELL TO GARRATT. AS WELL, THERE IS THE EVIDENCE THAT THE NIGHT SHIFT FOREMAN, CHARLES SOLEN, INVITED HALBERT "TO SIGN" AGAINST THE UNION APPROXIMATELY A WEEK PRIOR TO THE POSTING OF THE NOTICE OF THE APPLICANT'S APPLICATION FOR CERTIFICATION. MOREOVER, THERE IS EVIDENCE OF A "ROUND-ROBIN" PETITION AGAINST THE UNION WHICH ON OCCASION, AT LEAST, WAS LEFT OPENLY EXPOSED ON THE WORK BENCH OF GARRATT WHICH IS NEXT TO THE COMPANY OFFICE. THE ABSENCE OF EVIDENCE RELATING TO THE ORIGINATION AND CIRCULATION OF THIS DOCUMENT AND ITS ULTIMATE DISPOSITION IS OF CONCERN TO THE BOARD. WE NOTE THAT NOTWITHSTANDING THE FACT THAT REFERENCE WAS MADE TO THIS DOCUMENT BY THREE OF THE EMPLOYEES WHO GAVE EVIDENCE, GARRATT WHO OBVIOUSLY HAD KNOWLEDGE ABOUT IT DID NOT TESTIFY AT THE HEARING.

12. HAVING REGARD TO ALL THE CIRCUMSTANCES AS REVEALED BY THE EVIDENCE, THE BOARD IS NOT PREPARED TO ACCEPT THE PETITIONS FILED IN OPPOSITION TO THE INSTANT APPLICATION AS REPRESENTING A VOLUNTARY EXPRESSION OF THE TRUE WISHES OF THE EMPLOYEES WHO SIGNED THEM. THE BOARD THEREFORE FINDS THAT THE PETITIONS DO NOT CAST DOUBT ON THE EVIDENCE OF MEMBERSHIP FILED BY THE APPLICANT SO AS TO CAUSE THE BOARD TO SEEK THE CONFIRMATORY EVIDENCE OF A REPRESENTATION VOTE.

13. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN SIXTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON APRIL 12, 1972, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 92(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

14. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

1240-71-R: INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION 586 (APPLICANT) v. DONALD SERVANT ELECTRIC LIMITED (RESPONDENT).

BEFORE: R. A. FURNESS, VICE-CHAIRMAN AND BOARD MEMBERS E. BOYER AND F. W. MURRAY.

APPEARANCES AT THE HEARING: M. J. O'GRADY FOR THE APPLICANT; W. G. PHELPS, L. BRENNAN AND D. A. SERVANT FOR THE RESPONDENT.

DECISION OF THE BOARD: MAY 3, 1972.

1. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(N) OF THE LABOUR RELATIONS ACT.
2. THE BOARD FURTHER FINDS THAT THIS IS AN APPLICATION FOR CERTIFICATION WITHIN THE MEANING OF SECTION 108 OF THE LABOUR RELATIONS ACT.
3. THE BOARD FURTHER FINDS THAT ALL ELECTRICIANS AND ELECTRICIANS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.
4. THE BOARD HAS CAREFULLY CONSIDERED THE WRITTEN AND ORAL REPRESENTATIONS OF THE PARTIES ON THE REPORT OF THE EXAMINER DATED FEBRUARY 14, 1972, IN THIS MATTER AND ALSO ON THE SUPPLEMENTARY REPORT OF THE EXAMINER DATED FEBRUARY 25, 1972, IN THIS MATTER.
5. HAVING REGARD TO ALL OF THE EVIDENCE BEFORE IT AND TO THE REPRESENTATIONS OF THE PARTIES, THE BOARD FINDS THAT MAURICE SERVANT EXERCISES MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND IS ACCORDINGLY NOT INCLUDED IN THE BARGAINING UNIT DEFINED IN PARAGRAPH THREE HEREIN. THE BOARD ALSO FINDS THAT HENRI TREMBLAY, ON NOVEMBER 8, 1971, THE DATE OF THE MAKING OF THIS APPLICATION, WAS WORKING PART OF THAT DAY WITHIN THE GEOGRAPHIC AREA INCLUDED IN THE GEOGRAPHIC AREA IN THE BARGAINING UNIT DEFINED IN PARAGRAPH THREE HEREIN. HAVING REGARD TO THE DECISION OF THE BOARD IN THE DONALD SERVANT ELECTRIC LIMITED CASE, (BOARD FILE NO. 1358-71-U - DECISION DATED MARCH 17, 1972), TO ALL OF THE EVIDENCE BEFORE THE BOARD AND TO THE PROVISIONS OF SECTION 1(2) OF THE LABOUR RELATIONS ACT, THE BOARD FINDS THAT MARCEL LEGAULT WAS EMPLOYED BY THE RESPONDENT ON NOVEMBER 8, 1971, AS AN ELECTRICIAN. HOWEVER, THERE IS NO EVIDENCE BEFORE THE BOARD THAT ON NOVEMBER 8, 1971, MARCEL LEGAULT WOULD HAVE BEEN EMPLOYED BY THE RESPONDENT IN THE GEOGRAPHIC AREA IN THE BARGAINING UNIT DEFINED IN PARAGRAPH THREE HEREIN RATHER THAN IN THE PROVINCE OF QUEBEC (WHERE THE RESPONDENT ALSO EMPLOYED ELECTRICIANS).
6. THE BOARD FURTHER FINDS THAT THE PERSONS IN THE EMPLOY OF THE RESPONDENT IN THE BARGAINING UNIT DEFINED IN PARAGRAPH THREE HEREIN, ON NOVEMBER 8, 1971, THE DATE OF THE MAKING OF THIS APPLICATION, WERE:

YVES BARRETTE
C. CAMPEAU
R. LAGIMONIERE
E. MANZILLO
F. SEBASTIEN AND
HENRI TREMBLAY

7. THE BOARD FURTHER FINDS THAT THIS IS THE LIST FOR THE PURPOSES OF THE COUNT AND THAT THE APPLICANT FILED EVIDENCE OF MEMBERSHIP OF THE TYPE INDICATED AT THE HEARING ON BEHALF OF FOUR OF THE NAMED PERSONS REFERRED TO IN PARAGRAPH SIX HEREIN.

8. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN SIXTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON NOVEMBER 18, 1971, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 92(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

9. THE RESPONDENT REQUESTED THAT THE BOARD DIRECT A REPRESENTATION VOTE IN THIS MATTER EVEN IF THE BOARD WAS SATISFIED THAT THE APPLICANT HAD FILED SUFFICIENT EVIDENCE TO BE ENTITLED TO OUTRIGHT CERTIFICATION WITHOUT A REPRESENTATION VOTE. THERE IS NOTHING BEFORE THE BOARD WHICH WOULD CAUSE THE BOARD TO SEEK THE CONFIRMATORY EVIDENCE OF A REPRESENTATION VOTE. REFERENCE IS MADE TO THE SHERATON VISCOUNT MOTOR HOTEL CASE, O.L.R.B. MONTHLY REPORT NOVEMBER 1971, P. 693.

10. IN THE RESULT, A CERTIFICATE WILL ISSUE TO THE APPLICANT.

1081-71-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. NORTH SIMCOE ELECTRICAL CONTRACTING LTD. (RESPONDENT) V. INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION 1687 (INTERVENER).

BEFORE: R.A. FURNESS, VICE CHAIRMAN AND BOARD MEMBERS E. BOYER AND F.W. MURRAY.

APPEARANCES AT THE HEARING: WILLIAM R. HERRIDGE, Q.C., ED VANDERKLOET AND GERALD VANDEZANDE FOR THE APPLICANT; MICHAEL GORDON, EGDIO BOLZONELLO AND JOHN A.B. MACDONALD FOR THE RESPONDENT; A.G. MATTHEWS, L. POPOVICH AND BERNARD BARNES FOR THE INTERVENER.

DECISION OF THE BOARD: MAY 3, 1972.

1. THE NAME "NORTH SIMCOE ELECTRIC LIMITED" APPEARING IN THE STYLE OF CAUSE OF THIS APPLICATION AS THE NAME OF THE RESPONDENT IS AMENDED TO READ: "NORTH SIMCOE ELECTRICAL CONTRACTING LTD."

2. THIS APPLICATION FOR CERTIFICATION WAS FILED ON OCTOBER 4, 1971.

3. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(N) OF THE LABOUR RELATIONS ACT.

4. THE BOARD FURTHER FINDS THAT THIS IS AN APPLICATION FOR CERTIFICATION WITHIN THE MEANING OF SECTION 108 OF THE LABOUR RELATIONS ACT.

5. THE APPLICANT IS SEEKING CERTIFICATION ON BEHALF OF A BARGAINING UNIT OF EMPLOYEES DESCRIBED AS:

"ALL ELECTRICIANS AND ELECTRICIAN APPRENTICES IN THE EMPLOY OF THE RESPONDENT AND WORKING IN GEOGRAPHIC AREA #16 AS SET BY THE ONTARIO LABOUR RELATIONS BOARD, CONSTRUCTION INDUSTRY DIVISION, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN."

REGULAR BOARD GEOGRAPHIC AREA #16 CONSISTS OF THE AREA WITHIN A TWENTY MILE RADIUS OF THE NORTH BAY CITY POST OFFICE. THE JOB SITE AFFECTED BY THIS APPLICATION WAS IN NORTH BAY.

6. THE INTERVENER CLAIMED TO HAVE A COLLECTIVE AGREEMENT WITH THE RESPONDENT WHICH COVERED THE EMPLOYEES AFFECTED BY THIS APPLICATION. IT WAS THE CONTENTION OF THE INTERVENER THAT THIS APPLICATION WAS UNTIMELY.

7. MR. LOU POPOVICH GAVE EVIDENCE ON BEHALF OF THE INTERVENER. HE TESTIFIED THAT THE RESPONDENT CAME TO WORK IN THE INTERVENER'S TERRITORIAL JURISDICTION DURING THE SUMMER OF 1968 AND THAT THE RESPONDENT BECAME SIGNATORY TO THE INTERVENER'S THEN CURRENT COLLECTIVE AGREEMENT WHICH EXPIRED ON DECEMBER 31, 1969. HE TESTIFIED THAT DURING THE MONTHS OF NOVEMBER AND DECEMBER OF 1969 AND JANUARY OF 1970 THE INTERVENER WAS ENGAGED IN NEGOTIATIONS WITH THE SUDBURY ELECTRICAL CONTRACTORS ASSOCIATION (HEREINAFTER REFERRED TO AS THE "ASSOCIATION"). MR. POPOVICH INFORMED THE BOARD THAT THE MINISTER OF LABOUR ISSUED A "NO BOARD" REPORT WITH RESPECT TO THESE NEGOTIATIONS IN JANUARY 1970 AND THAT A STRIKE OF TWO WEEKS DURATION WAS CONDUCTED AGAINST THE ASSOCIATION. THE STRIKE WAS SETTLED ON JANUARY 27, 1970 AND A NEW COLLECTIVE AGREEMENT BETWEEN THE INTERVENER AND THE ASSOCIATION WAS SIGNED. THIS NEW COLLECTIVE AGREEMENT WAS EFFECTIVE FROM FEBRUARY 1, 1970 UNTIL DECEMBER 31, 1971 AND FROM YEAR TO YEAR THEREAFTER SUBJECT TO NOTICE.

8. MR. POPOVICH FURTHER TESTIFIED THAT DURING 1970 THE RESPONDENT AGAIN WORKED IN THE INTERVENER'S TERRITORIAL JURISDICTION AND EMPLOYED BETWEEN TWO AND SIX MEN AND THAT ON BEHALF OF THESE MEN THE RESPONDENT CONTRIBUTED THIRTY CENTS FOR EACH EMPLOYEE PER HOUR WORKED INTO THE INTERVENER'S HEALTH AND WELFARE FUND AS PROVIDED IN THE COLLECTIVE AGREEMENT BETWEEN THE INTERVENER AND THE ASSOCIATION EFFECTIVE FEBRUARY 1, 1970. IN ADDITION, HE MAINTAINED THAT ONE GRIEVANCE WAS SETTLED UNDER THE TERMS OF THE LAST-MENTIONED COLLECTIVE AGREEMENT.

9. MR. POPOVICH ALSO PRODUCED A TELEGRAM DATED FEBRUARY 6, 1970 FROM THE RESPONDENT TO THE INTERVENER WHICH HE ALLEGED, CONFIRMED THAT THE RESPONDENT WOULD ABIDE BY THE TERMS OF THE COLLECTIVE AGREEMENT EFFECTIVE FEBRUARY 1, 1970 WITH THE ASSOCIATION.

10. UNDER CROSS-EXAMINATION BY COUNSEL FOR THE RESPONDENT MR. POPOVICH AGREED THAT THE RESPONDENT DID NOT PARTICIPATE IN THE NEGOTIATIONS REGARDING THE COLLECTIVE AGREEMENT WITH THE ASSOCIATION AND THAT NO ONE APPEARED ON BEHALF OF THE RESPONDENT AT SUCH NEGOTIATIONS. MR. POPOVICH STATED THAT IN OCTOBER, 1969 THE INTERVENER GAVE THE RESPONDENT WRITTEN NOTICE TO BARGAIN PURSUANT TO SECTION 2 OF THE COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERVENER WHICH WAS EFFECTIVE FROM MARCH 4, 1968 UNTIL DECEMBER 31, 1969 AND THAT IN JANUARY, 1970 THE INTERVENER SIGNED A NEW COLLECTIVE AGREEMENT WITH THE ASSOCIATION. HOWEVER, MR. POPOVICH CONCEDED THAT THE COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERVENER WHICH WAS EFFECTIVE FROM MARCH 4, 1968, CAME TO AN END ON DECEMBER 31, 1969.

11. IN REPLY TO FURTHER CROSS-EXAMINATION BY COUNSEL FOR THE RESPONDENT, MR. POPOVICH CONCEDED THAT HE DID NOT KNOW WHERE MR. EDGIO BOZONELLO, THE PRESIDENT OF THE RESPONDENT, WAS WHEN THE TELEGRAM DATED FEBRUARY 6, 1970, WAS SENT TO THE INTERVENER. MR. POPOVICH ALSO AGREED THAT THE RESPONDENT'S CONTRIBUTION TO THE INTERVENER'S HEALTH AND WELFARE FUND FOR FEBRUARY AND MARCH OF 1970 WAS DETERMINED ON THE BASIS OF SECTION 41 OF THE COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERVENER WHICH WAS EFFECTIVE FROM MARCH 4, 1968 AND NOT ACCORDING TO THE ALLEGED COLLECTIVE AGREEMENT BETWEEN THE ASSOCIATION AND THE INTERVENER EFFECTIVE FEBRUARY 1, 1970. IT WAS ALSO ESTABLISHED IN CROSS-EXAMINATION THAT A GRIEVANCE HAD BEEN FILED UNDER THE ALLEGED COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERVENER EFFECTIVE FROM FEBRUARY 1, 1970 UNTIL DECEMBER 31, 1971 AND THAT THE RESPONDENT AND THE INTERVENER HAD SETTLED THE GRIEVANCE WITHOUT ANY ADMISSION BY THE RESPONDENT THAT IT WAS BOUND BY ANY COLLECTIVE AGREEMENT WITH THE INTERVENER.

12. UNDER CROSS-EXAMINATION BY COUNSEL FOR THE APPLICANT, MR. POPOVICH AGREED THAT THE RESPONDENT WAS NEVER A MEMBER OF THE ASSOCIATION AND THAT IT WAS THE POSITION OF THE INTERVENER THAT THE RESPONDENT WAS BOUND BY THE COLLECTIVE AGREEMENT EFFECTIVE FROM MARCH 4, 1968. HOWEVER, WITH REGARD TO THE ALLEGED COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERVENER EFFECTIVE FEBRUARY 1, 1970, MR. POPOVICH FRANKLY ADMITTED THAT APART FROM THE TELEGRAM ALLEGEDLY SENT BY THE RESPONDENT TO THE INTERVENER THERE WAS NO EVIDENCE TO INDICATE THAT THE RESPONDENT WAS BOUND BY THE LAST-MENTIONED COLLECTIVE AGREEMENT.

13. THE RESPONDENT AND THE INTERVENER AGREED THAT A CONCILIATION OFFICER WAS APPOINTED REGARDING THE COLLECTIVE AGREEMENT BETWEEN

THE RESPONDENT AND THE INTERVENER EFFECTIVE FROM MARCH 4, 1968 AND THAT A CONCILIATION OFFICER WAS APPOINTED IN NOVEMBER, 1969 AND THAT THE INTERVENER HAD MADE A SEPARATE APPLICATION FOR THE APPOINTMENT OF A CONCILIATION OFFICER WITH REFERENCE TO ITS DISPUTE WITH THE RESPONDENT. THE RESPONDENT AND THE INTERVENER ALSO AGREED THAT THIS APPLICATION WAS MADE IN NOVEMBER 1969 AND THAT A "NO BOARD" REPORT ISSUED WITH RESPECT TO THIS CONCILIATION APPLICATION IN JANUARY 1970.

14. MR. EDGIO BOZONELLO, THE PRESIDENT OF THE RESPONDENT, WAS CALLED AS A WITNESS BY THE INTERVENER. MR. BOZONELLO IDENTIFIED HIS SIGNATURE ON THE COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERVENER EFFECTIVE FROM FEBRUARY 1, 1968. HE TESTIFIED THAT THE RESPONDENT HAD WORKED IN THE SUDBURY AREA IN MARCH OF 1970 AND HAD PAID THE ELECTRICIANS IN ITS EMPLOY AT A RATE OF \$5.55 PER HOUR AND THAT THIS WAS NOT THE RATE FOR ELECTRICIANS PROVIDED FOR IN THE COLLECTIVE AGREEMENT EFFECTIVE FROM FEBRUARY 1, 1968, AND THAT THE HOURLY RATE FOR ELECTRICIANS UNDER THE COLLECTIVE AGREEMENT BETWEEN THE INTERVENER AND THE ASSOCIATION WAS \$5.55. HE GAVE EVIDENCE THAT THE RATE FOR WELFARE WAS THIRTY CENTS PER HOUR UNDER THE COLLECTIVE AGREEMENT BETWEEN THE INTERVENER AND THE ASSOCIATION EFFECTIVE FROM FEBRUARY 1, 1970 AND THAT THE RESPONDENT HAD PAID INTO THE INTERVENER'S HEALTH AND WELFARE FUND FOR MAY 1970 AT THE RATE OF THIRTY CENTS PER HOUR.

15. MR. BOZONELLO GAVE EVIDENCE THAT BETWEEN OCTOBER, 1969 AND FEBRUARY 1970 HE OCCASIONALLY SPOKE TO MR. POPOVICH AND THAT HE TOLD MR. POPOVICH THAT HE WOULD LOOK OVER THE COLLECTIVE AGREEMENT BETWEEN THE INTERVENER AND THE ASSOCIATION AND THAT THE RESPONDENT HAD RECEIVED COPIES OF THE LAST-MENTIONED COLLECTIVE AGREEMENT.

16. IN CROSS-EXAMINATION BY COUNSEL FOR THE RESPONDENT MR. BOZONELLO AGREED THAT DURING OCTOBER, NOVEMBER AND DECEMBER OF 1969 THE RESPONDENT HAD NOT BARGAINED WITH THE INTERVENER AND THAT THE RESPONDENT DID NOT ATTEND ANY MEETINGS WITH A CONCILIATION OFFICER. HE CONFIRMED THAT THE RESPONDENT HAS NEVER BEEN A MEMBER OF THE ASSOCIATION AND THAT THE RESPONDENT HAD NEVER INSTRUCTED THE ASSOCIATION TO REPRESENT IT.

17. MR. BOZONELLO ALSO TESTIFIED, UNDER FURTHER CROSS-EXAMINATION BY COUNSEL FOR THE RESPONDENT, THAT HE DID NOT SEND THE TELEGRAM DATED FEBRUARY 6, 1970 TO THE INTERVENER. HE STATED, HOWEVER, THAT PRIOR TO FEBRUARY 6, 1970 MR. BOZONELLO, HIS OFFICE SECRETARY AND MR. POPOVICH ENGAGED IN A THREE-WAY TELEPHONE CONVERSATION DURING WHICH MR. POPOVICH DICTATED THE CONTENTS OF THE TELEGRAM DATED FEBRUARY 6, 1970. AT THIS TIME MR. BOZONELLO INFORMED MR. POPOVICH THAT HE WANTED TIME TO LOOK AT THE PROPOSED COLLECTIVE AGREEMENT. MR. BOZONELLO ALSO TESTIFIED THAT NOT ONLY DID HE INSTRUCT HIS OFFICE SECRETARY NOT TO SENT THE TELE-

GRAM TO THE INTERVENER BUT INSTRUCTED HER NOT TO SEND THE TELEGRAM UNTIL HE HAD MADE UP HIS MIND ABOUT THE PROPOSED COLLECTIVE AGREEMENT.

18. HOWEVER, MR. BOZONELLO ALSO STATED UNDER CROSS-EXAMINATION BY COUNSEL FOR THE RESPONDENT THAT HE WAS AWAY FROM HIS OFFICE FOR ABOUT TWO DAYS AND COULD NOT BE REACHED WHEN ONE OF THE RESPONDENT'S FOREMEN TELEPHONED THE OFFICE TO SAY THAT IF THE TELEGRAM WAS NOT SENT TO THE INTERVENER THE ELECTRICIANS IN THE EMPLOY OF THE RESPONDENT WOULD WALK OFF THE JOB. THE OFFICE SECRETARY ACTED WITHOUT THE CONSENT OF MR. BOZONELLO AND SENT THE TELEGRAM TO THE INTERVENER ON FEBRUARY 6, 1970. WITH REFERENCE TO THE GRIEVANCE FILED BY THE INTERVENER, MR. BOZONELLO PRODUCED CORRESPONDENCE BETWEEN HIMSELF AND HIS SOLICITOR WHICH INDICATED THAT THE RESPONDENT AGREED TO SETTLE THE GRIEVANCE FOR FORTY-FOUR DOLLARS AND FORTY CENTS RATHER THAN EXPEND SEVERAL HUNDRED DOLLARS ON AN ARBITRATION EVEN IF THE RESPONDENT WON THE ARBITRATION.

19. MR. BOZONELLO GAVE EVIDENCE THAT THE REASON THE RESPONDENT SETTLED THE GRIEVANCE RATHER THAN ARBITRATE IT WAS TO SAVE MONEY AND THAT SUCH ACTION DID NOT RECOGNIZE THE EXISTENCE OF A COLLECTIVE AGREEMENT WITH THE INTERVENER. HE FURTHER AGREED THAT SINCE SIGNING THE COLLECTIVE AGREEMENT EFFECTIVE FROM MARCH 4, 1968, THE RESPONDENT HAD NOT SIGNED ANY DOCUMENT WITH THE INTERVENER.

20. WITH REFERENCE TO THE SECOND ALLEGED COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERVENER, IT IS CLEAR THAT THE INTERVENER'S CLAIM THAT THIS DOCUMENT IS A COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERVENER RESTS UPON THE TELEGRAM DATED FEBRUARY 6, 1970 FROM THE RESPONDENT'S OFFICE SECRETARY TO THE INTERVENER. ON THE EVIDENCE BEFORE THE BOARD, WE FIND THAT THERE WAS NO APPARENT AUTHORITY FOR THE OFFICE SECRETARY TO SEND SUCH A TELEGRAM AND THAT THERE WAS NO EVIDENCE BEFORE THE BOARD AS TO THE USUAL AUTHORITY OF AN OFFICE SECRETARY.

21. HOWEVER, IT MAY BE ARGUED THAT THE RESPONDENT'S SUBSEQUENT CONDUCT IN NOT POINTING OUT TO THE INTERVENER THAT THE OFFICE SECRETARY HAD NO AUTHORITY TO BIND THE RESPONDENT AMOUNTED TO RETIFICATION BY THE RESPONDENT. SIMILARLY, IT MAY ALSO BE ARGUED THAT THE WELFARE PAYMENTS MADE BY THE RESPONDENT TO THE INTERVENER'S WELFARE AND HEALTH FUND FOR MAY 1970 AND THE PAYMENT OF THE GOING RATE FOR ELECTRICIANS AS SET FORTH IN THE ALLEGED COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERVENER EFFECTIVE FROM FEBRUARY 1, 1970 AMOUNTED TO FURTHER EVIDENCE OF RATIFICATION BY THE RESPONDENT. IT MUST NOT BE FORGOTTEN THAT IN THE COURSE OF PROCESSING THE GRIEVANCE FILED BY THE INTERVENER, THE RESPONDENT SETTLED THIS GRIEVANCE WITHOUT ADMITTING THAT IT WAS BOUND BY A COLLECTIVE AGREEMENT.

22. IT MAY ALSO BE ARGUED THAT THE WORDING OF THE TELEGRAM, FAR FROM AGREEING TO BE BOUND BY THE AGREEMENT BETWEEN THE ASSOCIATION AND THE INTERVENER, MERELY STATES THAT THE RESPONDENT WOULD ABIDE BY ITS TERMS. WE FIND THAT THIS SIGNIFICATION CONTAINED IN THE TELEGRAM DOES NOT INDICATE AN INTENTION BY THE RESPONDENT TO BE BOUND BY THE AFORESAID ALLEGED COLLECTIVE AGREEMENT EFFECTIVE FEBRUARY 1, 1970. HOWEVER, BE THAT AS IT MAY, EVEN IF THE BOARD WERE TO CONSTRUE THE WORDING OF THE TELEGRAM AS AN ATTEMPT TO BIND THE RESPONDENT, IT IS QUITE CLEAR THAT THE TELEGRAM ALONE BEING AN UNSIGNED DOCUMENT WAS NOT SUFFICIENT TO CREATE A COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERVENER. IT IS OF COURSE ALSO VERY SIGNIFICANT THAT THERE WAS NO EVIDENCE BEFORE THE BOARD TO THE EFFECT THAT THE INTERVENER WOULD BE BOUND BY SUCH AN AGREEMENT WITH THE RESPONDENT. REFERENCE IS MADE TO THE CANADA MACHINERY CORPORATION LIMITED CASE 61 CLLC ¶16,194, TO THE MARSLAND ENGINEERING LIMITED CASE OLRB MONTHLY REPORT APRIL, 1970 P.133 AND TO THE R.T. CONSTRUCTION CASE, OLRB MONTHLY REPORT SEPTEMBER, 1971 P. 593.

23. RETURNING NOW TO THE COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERVENER EFFECTIVE MARCH 4, 1968 THE INTERVENER HAS INFORMED THE BOARD AND THE RESPONDENT HAS AGREED THAT TIMELY WRITTEN NOTICE TO BARGAIN WAS GIVEN BY THE INTERVENER TO THE RESPONDENT IN OCTOBER, 1969. A CONCILIATION OFFICER WAS APPOINTED AND THE MINISTER OF LABOUR ISSUED A "NO BOARD" REPORT TO THE RESPONDENT AND TO THE INTERVENER IN JANUARY, 1970. IT IS CLEAR THAT THE TIME PERIODS AS CONTEMPLATED BY SECTION 53(2) OF THE LABOUR RELATIONS ACT HAVE ELAPSED AND THAT THIS APPLICATION FOR CERTIFICATION IS TIMELY IN THESE CIRCUMSTANCES.

24. THE RESPONDENT RAISED THE ARGUMENT THAT THE INTERVENER'S BARGAINING RIGHTS FLOWING FROM HIS FIRST COLLECTIVE AGREEMENT HAD "EVAPORATED" AND THAT THERE HAD BEEN ABANDONMENT OF ITS BARGAINING RIGHTS WITH RESPECT TO EMPLOYEES OF THE RESPONDENT COVERED UNDER THIS FIRST COLLECTIVE AGREEMENT. THE EVIDENCE BEFORE THE BOARD, HOWEVER, DOES NOT INDICATE THAT THE INTERVENER HAS ABANDONED ITS BARGAINING RIGHTS. ON THE CONTRARY, THE INTERVENER HAS PROCESSED A GRIEVANCE WITH THE RESPONDENT, ENDEAVOURED TO ENTER INTO A SECOND COLLECTIVE AGREEMENT WITH THE RESPONDENT AND HAS GENERALLY PURSUED ITS BARTAINING RIGHTS WITH THE RESPONDENT.

25. THE FIRST COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERVENER COVERS THE EMPLOYEES FOR WHOM THE APPLICANT IS SEEKING CERTIFICATION. HAVING REGARD TO THE FACT THAT THE APPLICANT IS ENTITLED TO ATTEMPT TO DISPLACE THE INTERVENER AS THE BARGAINING AGENT FOR CERTAIN ELECTRICIANS AND ELECTRICIANS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT, IT IS UNNECESSARY FOR THE BOARD TO CONSIDER IN THIS APPLICATION THE ARGUMENT ADVANCED BY THE APPLICANT IN SUPPORT OF

ITS POSITION THAT IT IS ENTITLED TO AN APPROPRIATE BARGAINING UNIT CONSISTING OF ALL ELECTRICIANS AND ELECTRICIANS' APPRENTICES PURSUANT TO SECTION 6(2) OF THE LABOUR RELATIONS ACT.

26. HAVING REGARD TO THE FIRST COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERVENER, THE BOARD FINDS THAT ALL APPRENTICES, ELECTRICIANS, GROUND MEN, LINEMEN, SUB-FOREMEN AND FOREMAN EMPLOYED BY THE RESPONDENT IN THE DISTRICTS OF SUDBURY, ALGOMA, MANITOULIN, NIP- ISSING, TIMISKAMING, COCHRANE AND PATRICIA PORTION OF KENORA, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

27. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT NOT LESS THAN THIRTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON OCTOBER 13, 1971, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES UNDER SECTION 92(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

28. A REPRESENTATION VOTE WILL BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT. ALL EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

29. VOTERS WILL BE GIVEN A CHOICE BETWEEN THE APPLICANT AND THE INTERVENER.

30. THE MATTER IS REFERRED TO THE REGISTRAR.

1750-71-R: INTERNATIONAL UNION, UNITED PLANT GUARD WORKERS OF AMERICA, LOCAL 1962 (APPLICANT) V. WELLS FARGO ARMoured EXPRESS, LTD. (RESPONDENT) V. TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL 91 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (INTERVENER).

BEFORE: O.B. SHIME, VICE-CHAIRMAN, AND BOARD MEMBERS J.D. BELL AND P.J. O'KEEFE.

APPEARANCES AT THE HEARING: W.E. COOK FOR THE APPLICANT; W.G. PHELPS AND DAVID F. BYRNE FOR THE RESPONDENT; I.J. THOMSON FOR THE INTERVENER.

DECISION OF THE BOARD: MAY 8, 1972.

1. THE NAME "WELLS FARGO ARMoured EXPRESS LTD." APPEARING IN THE STYLE OF CAUSE OF THIS APPLICATION AS THE NAME OF THE RESPONDENT IS AMENDED TO READ: "WELLS FARGO ARMoured EXPRESS, LTD.".
2. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(N) OF THE LABOUR RELATIONS ACT.
3. THE INTERVENER SUBMITTED THAT THIS BOARD DOES NOT HAVE JURISDICTION TO DEAL WITH THIS APPLICATION BECAUSE THE RESPONDENT OPERATES AN INTER-PROVINCIAL UNDERTAKING. HAVING REGARD TO THE SUBMISSIONS OF THE PARTIES AND THE EVIDENCE ADDUCED WE ARE NOT SATISFIED THAT ON THE BALANCE OF PROBABILITIES THE RESPONDENT EMPLOYER HAS AN INTER-PROVINCIAL UNDERTAKING WHICH WOULD BRING IT OUTSIDE THE JURISDICTION OF THIS BOARD AND ACCORDINGLY THE INTERVENER'S MOTION IN THAT REGARD IS DENIED.
4. IN THESE CIRCUMSTANCES IT WILL NOT BE NECESSARY TO DEAL WITH THE QUESTION OF THE INTERVENER'S STATUS.
5. HAVING REGARD TO THE SUBMISSIONS OF THE PARTIES THE BOARD FURTHER FINDS THAT ALL SECURITY GUARDS EMPLOYED BY THE RESPONDENT AT OTTAWA, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE AND SALES STAFF, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.
6. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN SIXTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON MARCH 29, 1972, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 92(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.
7. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

844-71-JD: GENERAL CONCRETE LTD. (COMPLAINANT) v. INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL 700 AND LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCALS 506 AND 625 (RESPONDENTS).

BEFORE: O.B. SHIME, VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND J.D. BELL.

APPEARANCES AT THE HEARING: K.G. SCOTT, J.E. GAMMAGE AND P. BERTUZZI FOR THE COMPLAINANT; AUBREY GOLDEN AND PATRICK DOYLE FOR INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL

700; R. KOSKIE AND T. NEIL FOR LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCALS 506 AND 625.

DECISION OF O.B. SHIME, VICE-CHAIRMAN, AND BOARD MEMBER J.D. BELL:
MAY 9, 1972.

1. THIS IS A COMPLAINT PURSUANT TO SECTION 81 OF THE LABOUR RELATIONS ACT (FORMERLY SECTION 66) CONCERNING THE SUPPLYING, UNLOADING AND INSTALLATION OF PRECAST CONCRETE FLOOR AND ROOF SLABS AND MORE PARTICULARLY THE HOOKING ON, SIGNALLING, LANDING AND SHIMMING OF SUCH SLABS AT AN APARTMENT BUILDING IN WINDSOR.
2. THE COMPLAINANT MANUFACTURES AND INSTALLS PRECAST CONCRETE SLABS AND HAS A COLLECTIVE AGREEMENT, WHICH WAS IN EXISTENCE AT THE TIME THE DISPUTE AROSE, WITH THE LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCALS 506 AND 625 (HEREINAFTER REFERRED TO AS THE "LABOURERS"). THE RESPONDENT'S HEAD OFFICE IS IN HAMILTON, ONTARIO, AND IT IS PRESENTLY PERFORMING THE SUBCONTRACT ON AN APARTMENT BUILDING AT WINDSOR.
3. THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL 700 (HEREINAFTER REFERRED TO AS "IRONWORKERS") CLAIM THAT THE WORK BEING PERFORMED BY THE COMPLAINANT WITH LABOURERS SHOULD BE DONE BY A COMPOSITE CREW COMPOSED OF LABOURERS AND IRONWORKERS.
4. INITIALLY WE FIND THAT THE WORK HAS BEEN CONSISTENTLY PERFORMED AT DIFFERENT LOCATIONS IN THE PROVINCE OF ONTARIO OVER A CONSIDERABLE PERIOD OF TIME AND IN A SATISFACTORY MANNER BY A SKILLED CREW OF LABOURERS EMPLOYED BY THE COMPLAINANT.
5. WHILE CONSIDERABLE EVIDENCE WAS ADDUCED BY BOTH UNIONS WITH RESPECT TO THE QUESTION OF THE RESPECTIVE SKILLS AND ECONOMY OF PERFORMANCE OF THE IRONWORKERS AND LABOURERS, WE ARE NOT PREPARED TO GIVE ANY WEIGHT TO THOSE FACTORS. THE EVIDENCE OF ECONOMY WAS GENERALLY UNSATISFACTORY AND DEMONSTRATED LITTLE, IF ANY, SIGNIFICANCE MERITING CONCERN. THE EVIDENCE CONCERNING SKILL WAS ALSO OF LITTLE MERIT. IN OUR VIEW THE QUESTION OF SKILL WAS CONFUSED WITH THE QUESTION OF EXPERIENCE. WE FIND NO SPECIAL SKILLS IN THE SENSE THAT CONSIDERABLE TRAINING AND ABILITY ARE REQUIRED FOR THE WORK IN QUESTION; RATHER WE ARE SATISFIED THAT A LIMITED TRAINING WITH SOME EXPERIENCE IS ALL THAT IS NECESSARY TO PERFORM THAT WORK. WE ARE ALSO SATISFIED THAT THE CREW OF LABOURERS EMPLOYED BY THE COMPLAINANT HAS THE TRAINING AND EXPERIENCE.
7. NOR DO WE FIND THAT A DETERMINATION CONCERNING THE ALLEGED SKILLS INVOLVES US IN PRESERVING THE TRADITIONAL WORK OF A CRAFT IN

THE SENSE THAT THE WORK HAS THE HISTORICAL QUALITY OF BEING COMMONLY PERFORMED BY ONE PARTICULAR CRAFT TO THE EXCLUSION OF OTHERS. THE WORK INVOLVES PRECAST CONCRETE WHICH IS A MATERIAL OF RECENT VINTAGE IN THE CONSTRUCTION INDUSTRY AND THE SUPPLY, UNLOADING AND INSTALLATION OF THE PRECAST CONCRETE IN THESE CIRCUMSTANCES IS NOT THE WORK OF AN ARTISAN WHICH WE FEEL IT IS INCUMBENT UPON US TO PRESERVE FOR A SPECIFIC GROUP.

8. THE CASE AMOUNTS TO THIS: THE COMPLAINANT HAS A SKILLED CREW OF LABOURERS - EMPLOYEES CAPABLE OF PERFORMING THE WORK. THEY HAVE BEEN COMING INTO WINDSOR TO PERFORM THAT WORK FOR SOMETIME. THE IRONWORKERS SUBMIT THAT A PRACTICE HAS GROWN UP IN THE WINDSOR AREA AND THAT IT HAS BEEN AGREED UPON BETWEEN THE WINDSOR CONTRACTORS AND THE WINDSOR UNIONS THAT COMPOSITE CREWS ARE TO PERFORM THE WORK IN THAT AREA. THE IRONWORKERS CLAIM THAT IF GENERAL CONCRETE IS PERMITTED TO DO THE WORK WITH LABOURERS IT WILL DESTROY THE AGREED UPON PRACTICE. THE ISSUE THEN IS ONE OF INDUSTRIAL PEACE. IF THE EMPLOYER ASSOCIATIONS AND UNIONS IN THE WINDSOR AREA HAVE WORKED OUT A MODUS OPERANDI WHICH HAS RESOLVED WORK JURISDICTION AND BROUGHT INDUSTRIAL STABILITY TO THE AREA, THEN WE ARE NOT PREPARED TO PERMIT AN INDIVIDUAL COMPANY TO MOVE INTO THE AREA AND UPSET THE STABILITY OF THE AREA UNLESS THERE ARE SUBSTANTIAL REASONS FOR SO DOING.

9. WE NOW TURN TO THE AREA PRACTICE. AT LEAST IN RESIDENTIAL PROJECTS AND SMALL APARTMENT BUILDINGS THE IRONWORKERS DO NOT CLAIM THE WORK IN QUESTION, NOR DO THE IRONWORKERS CLAIM THE WORK ON SMALL JOBS OR PROJECTS INVOLVING SLABS UNDER TWENTY FEET. THEY DO CLAIM THE WORK ON "LARGE JOBS". THE ADMISSION THAT LABOURERS CAN PERFORM THE WORK ON "SMALL JOBS" CONFIRMS OUR VIEW THAT THE LABOURERS ARE CAPABLE OF PERFORMING THE WORK IN QUESTION. THERE IS NOT A SIGNIFICANT DISTINCTION TO BE MADE WITH RESPECT TO THE WORK IN DISPUTE BASED ON SIZE. IF IT IS CONCEDED THAT LABOURERS CAN PERFORM ON SMALL JOBS IT MUST ALSO BE CONCEDED THAT THEY CAN PERFORM THE WORK ON LARGE JOBS.

10. THE EVIDENCE ADDUCED BY THE IRONWORKERS REVEALS THAT FROM LATE 1956 UNTIL 1961 THE WORK CONCERNING PRECAST CONCRETE ROOF SLABS WAS PERFORMED IN THE WINDSOR AREA BY A COMPANY KNOWN AS RYAN BUILDERS UNDER A COLLECTIVE AGREEMENT WITH IRONWORKERS. RYAN BUILDERS APPEARS TO HAVE BEEN THE MAIN CONTRACTOR AT THAT TIME. IN OCTOBER 1961 CERTAIN OTHER CONTRACTORS BEGAN TO APPEAR IN THE WINDSOR AREA USING COMPOSITE CREWS.

11. IN THE LATTER PART OF 1962 THERE WERE THREE PROJECTS AT WINDSOR WHERE THE WORK IN DISPUTE WAS PERFORMED BY COMPOSITE CREWS OF LABOURERS AND IRONWORKERS WORKING FOR A CONTRACTOR OTHER THAN RYAN BUILDERS. IN 1962 RYAN BUILDERS DID NOT PERFORM ANY WORK AT WINDSOR WITH IRONWORKERS.

12. IN 1963 RYAN BUILDERS PERFORMED WORK ON TWO PROJECTS AT WINDSOR AND ON ONE PROJECT OUTSIDE WINDSOR IN AN ADJACENT AREA USING IRONWORKERS, WHILE ANOTHER CONTRACTOR PERFORMED WORK ON A PROJECT IN AN ADJACENT MUNICIPALITY USING A COMPOSITE CREW.

13. IN 1964 AND 1965 THERE WERE NO PROJECTS INVOLVING THE WORK IN DISPUTE.

14. IN 1966 WORK WAS PERFORMED AT TWO PROJECTS IN A MUNICIPALITY ADJACENT TO WINDSOR BY CONTRACTORS OTHER THAN RYAN BUILDERS WITH COMPOSITE CREWS.

15. IN LATE 1967 THERE WERE TWO PROJECTS AT WINDSOR WHERE THE WORK IN DISPUTE WAS PERFORMED - IN ONE CASE BY RYAN BUILDERS USING IRONWORKERS AND IN THE OTHER CASE BY ANOTHER CONTRACTOR USING A COMPOSITE CREW.

16. IN 1968 THERE WERE NO RELEVANT PROJECTS AT WINDSOR ALTHOUGH THERE IS ONE IN AN ADJACENT MUNICIPALITY WHERE WORK WAS PERFORMED BY A COMPOSITE CREW FOR A CONTRACTOR OTHER THAN RYAN BUILDERS.

17. BEYOND APRIL 1968 THERE IS NO EVIDENCE ADDUCED BY THE IRONWORKERS TO INDICATE THE AREA PRACTICE. WE DO NOTE THAT OTHER PRECAST WORK HAS BEEN DONE, SUCH AS, THE ERECTION OF PRECAST CONCRETE WALL PANELS, BUT THAT WORK IS NOT IN DISPUTE.

18. THE EVIDENCE ADDUCED BY THE LABOURERS AND THE COMPLAINANT, GENERAL CONCRETE LTD., INDICATED THAT SINCE 1966 GENERAL CONCRETE LTD. HAS PARTICIPATED IN TWENTY-SEVEN PROJECTS IN THE WINDSOR AREA INVOLVING THE INSTALLATION AND ERECTION OF PRECAST CONCRETE ROOF SLABS. IN ADDITION, IT HAS PARTICIPATED IN SIMILAR PROJECTS IN ADJACENT MUNICIPALITIES. THE SIZE OF THE PROJECTS HAS VARIED FROM APPROXIMATELY 2,000 SQUARE FEET TO 198,000 SQUARE FEET. SOME OF THESE PROJECTS WERE SMALL ENOUGH TO FALL WITHIN THE GENERAL PURVIEW OF RESIDENTIAL OR APARTMENT BUILDINGS WHICH ARE NOT CLAIMED BY THE IRONWORKERS. THE EVIDENCE DOES DEMONSTRATE, HOWEVER, THAT A SUBSTANTIAL AMOUNT OF WORK OF THE TYPE IN DISPUTE HAS BEEN PERFORMED BY THE COMPLAINANT AT WINDSOR.

19. THE EVIDENCE TAKEN AS A WHOLE DOES NOT SUPPORT AN AREA PRACTICE. MUCH OF THE WORK DONE BY THE IRONWORKERS AT WINDSOR IN THE PAST HAS BEEN DONE WITH RYAN BUILDERS WHO APPEARED TO BE THE PRIMARY PRECAST CONTRACTOR IN THE AREA AT A PARTICULAR TIME. THE WORK WAS DONE PURSUANT TO A COLLECTIVE AGREEMENT AND NOT UNDER ANY SPECIAL TRADE OR JURISDICTIONAL BASIS. FURTHER, THE AREA PRACTICE, IF ANY, HAS BEEN NON-EXISTENT FOR LARGE PERIODS, E.G., 1964, 1965 AND 1968 TO 1971, AND IN THE REMAINING PERIODS IT HAS BEEN SPORADIC. ON THE RATHER SKETCHY EVIDENCE BEFORE US WE HESITATE TO FIND A CONFIRMED AREA PRACTICE.

SURELY, IF THE TRADE ASSOCIATIONS AND TRADE UNIONS HAVE WORKED OUT AN ARRANGEMENT IT MUST HAVE SOME SUBSTANCE IN FACT.

20. WE FURTHER FIND THAT THE COMPLAINANT ITSELF HAS PERFORMED SUFFICIENT WORK IN THE WINDSOR AREA SINCE AT LEAST LATE 1968 TO CAUSE FURTHER DOUBT THAT THERE WAS A FIXED AREA PRACTICE. THERE APPEARS TO BE A GREATER VOLUME OF WORK PERFORMED BY THE COMPLAINANT THAN OTHER PERSONS COMBINED.

21. IN THE RESULT WE DECLINE TO FIND THAT THERE IS SUFFICIENT EVIDENCE OF AN ESTABLISHED AREA PRACTICE TO RESOLVE THE JURISDICTIONAL CLAIM IN FAVOUR OF THE REMEDY REQUESTED BY THE IRONWORKERS.

22. WE FURTHER DECLINE TO ACCEPT THE PURPORTED AGREEMENT ENTERED INTO BETWEEN THE IRONWORKERS AND LABOURERS AS RESOLVING THE ISSUES AT HAND. AN AGREEMENT BETWEEN TWO UNIONS HAS NO BINDING EFFECT ON AN EMPLOYER, AND EVEN ASSUMING THAT THE AGREEMENT WAS VALID IT WOULD ONLY BE ONE PIECE OF EVIDENCE TO WEIGH IN ASSESSING THE RELATIVE CLAIMS - SUCH AN AGREEMENT IS NOT DETERMINATIVE OF THE ISSUES BEFORE US. WHILE THE TRADE UNIONS HAVE IT WITHIN THEIR OWN POWER TO RESOLVE JURISDICTIONAL CLAIMS, IF THEY COME TO THIS BOARD WITH UNRESOLVED CLAIMS OR A BREACH OF THEIR PRIVATE AGREEMENTS THEY CANNOT EXPECT US TO IGNORE THE INTERESTS OF OTHER PARTIES SINCE IT IS INCUMBENT UPON US TO WEIGH THE CLAIMS AND INTERESTS OF ALL PARTIES TO THE PROCEEDINGS.

23. IN THE RESULT THEREFORE THE BOARD DIRECTS THAT THE COMPLAINANT ASSIGN THE FOLLOWING WORK IN DISPUTE TO THE LABOURERS:

"THE SUPPLYING, UNLOADING AND INSTALLATION OF PRECAST CONCRETE FLOOR AND ROOF SLABS AND MORE PARTICULARLY THE HOOKING ON, SIGNALLING, LANDING AND SHIMMING OF SUCH SLABS."

DECISION OF BOARD MEMBER E. BOYER: MAY 9, 1972.

1. I DISSENT.

2. THE UNCONTRADICTED EVIDENCE IN THIS CASE IS THAT THE IRONWORKERS AND LABOURERS ENTERED INTO AN AGREEMENT WHEREIN IT WAS AGREED THAT THE WORK IN QUESTION WOULD BE DONE BY A COMPOSITE CREW. THAT AGREEMENT HAS BEEN LIVED UP TO IN THE WINDSOR AREA. THE AGREEMENT IS CLEAR AND POSITIVE AS TO ITS MEANING AND INTENTION. HAVING REGARD THEREFORE TO THE EVIDENCE AND FOR THE REASONS GIVEN IN MY DECISION IN LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 v. INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL UNION 721, BEER PRECAST CONCRETE LIMITED AND E.G.M. CAPE & COMPANY LTD. [1970] OLRB MTHLY. REP. 610 AT 614, I WOULD DIRECT THAT THE COMPLAINANT ASSIGN THE WORK IN DISPUTE TO A COMPOSITE CREW OF LABOURERS AND IRONWORKERS.

1730-71-U: BRIAN F. O'DONNELL (COMPLAINANT) v. AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA AND STEINBERG'S LIMITED OTHERWISE KNOWN AS MIRACLE FOOD MART (RESPONDENTS).

BEFORE: G. W. REED, Q.C., CHAIRMAN, AND BOARD MEMBERS E. BOYER AND H.J.F. ADE.

DECISION OF THE BOARD: MAY 9, 1972.

1. THIS IS A COMPLAINT UNDER SECTION 79 OF THE LABOUR RELATIONS ACT IN WHICH THE COMPLAINANT ALLEGES THAT HE HAS BEEN DEALT WITH BY THE RESPONDENTS CONTRARY TO SECTIONS 58(A) AND 60 OF THE ACT. THE COMPLAINANT SEEKS REINSTATEMENT BY THE RESPONDENT COMPANY AND COMPENSATION FOR LOST WAGES. A FIELD OFFICER WAS APPOINTED IN THIS MATTER AND HE HAS NOW SUBMITTED HIS REPORT TO THE BOARD. THE REPORT CONSISTS OF A STATEMENT SIGNED BY THE COMPLAINANT, A LETTER SETTING OUT THE RESPONDENT UNION'S POSITION AND A LETTER FROM THE RESPONDENT COMPANY SETTING OUT ITS POSITION. ATTACHED TO THE COMPLAINANT'S STATEMENT AND MADE PART OF THAT STATEMENT THERE IS A SERIES OF LETTERS BETWEEN THE COMPLAINANT AND THE UNION AND BETWEEN THE COMPLAINANT AND VARIOUS OFFICERS OF THE UNION AND ALSO BETWEEN VARIOUS OFFICERS OF THE UNION, INCLUDING A REPORT MADE BY THE PRESIDENT OF THE ONTARIO RETAIL COUNCIL TO THE UNION'S INTERNATIONAL PRESIDENT. IN DEALING WITH THIS COMPLAINT AND FOR PURPOSES OF THIS DECISION, WE HAVE CONSIDERED ONLY THE COMPLAINANT'S STATEMENT AND THE MATERIAL MADE A PART OF THAT STATEMENT.

2. SECTION 60 OF THE LABOUR RELATIONS ACT PROVIDES AS FOLLOWS:

60. A TRADE UNION OR COUNCIL OF TRADE UNIONS, SO LONG AS IT CONTINUES TO BE ENTITLED TO REPRESENT EMPLOYEES IN A BARGAINING UNIT, SHALL NOT ACT IN A MANNER THAT IS ARBITRARY, DISCRIMINATORY OR IN BAD FAITH IN THE REPRESENTATION OF ANY OF THE EMPLOYEES IN THE UNIT, WHETHER OR NOT MEMBERS OF THE TRADE UNION OR OF ANY CONSTITUENT UNION OF THE COUNCIL OF TRADE UNIONS, AS THE CASE MAY BE.

AS HAS BEEN POINTED OUT IN PREVIOUS CASES, SEE FOR EXAMPLE, PERCY WOODS AND NAPANEE INDUSTRIES LTD., [1971] OLRB REP. 730, SECTION 60 IMPOSES A DUTY ON A TRADE UNION, BUT IT DOES NOT IMPOSE ANY DUTY ON AN EMPLOYER. IT FOLLOWS, THEREFORE, THAT THE COMPLAINANT IS NOT ENTITLED TO RELY ON SECTION 60 IN SO FAR AS HIS COMPLAINT RELATES TO THE RESPONDENT COMPANY. IN ORDER TO BE SUCCESSFUL AGAINST THE RESPONDENT COMPANY THE COMPLAINANT MUST ESTABLISH THAT THE COMPANY WAS IN VIOLATION OF SOME SECTION OF THE LABOUR RELATIONS ACT OTHER THAN SECTION 79. SEE FOR EXAMPLE EAGLE PRECISION TOOL LIMITED CASE, OLRB M.R. JULY 1969, P. 551; AND NATIONAL

SEA PRODUCTS LIMITED CASE, OLRB M.R. MAY 1961, P. 62. WITH RESPECT TO THE RESPONDENT COMPANY, THE COMPLAINANT IS PRESUMABLY RELYING ON SECTION 58(A) WHICH PROVIDES AS FOLLOWS:

58. NO EMPLOYER, EMPLOYERS' ORGANIZATION OR PERSON ACTING ON BEHALF OF AN EMPLOYER OR AN EMPLOYERS' ORGANIZATION,

(A) SHALL REFUSE TO EMPLOY OR TO CONTINUE TO EMPLOY A PERSON, OR DISCRIMINATE AGAINST A PERSON IN REGARD TO EMPLOYMENT OR ANY TERM OR CONDITION OF EMPLOYMENT BECAUSE THE PERSON WAS OR IS A MEMBER OF A TRADE UNION OR WAS OR IS EXERCISING ANY OTHER RIGHTS UNDER THIS ACT;

3. THE COMPLAINANT WAS DISCHARGED ON JULY 20, 1971 BY THE RESPONDENT COMPANY. THE COMPLAINANT FELT THAT HE WAS UNJUSTLY DISCHARGED AND LAUNCHED A GRIEVANCE UNDER THE TERMS OF THE COLLECTIVE AGREEMENT EXISTING BETWEEN THE RESPONDENT COMPANY AND THE RESPONDENT UNION. A CAREFUL PERUSAL OF THE MATERIAL BEFORE US FAILS TO REVEAL ANY EVIDENCE WHATSOEVER THAT THE RESPONDENT EMPLOYER REFUSED TO CONTINUE TO EMPLOY THE COMPLAINANT BECAUSE HE WAS OR IS A MEMBER OF THE RESPONDENT TRADE UNION OR BECAUSE HE WAS EXERCISING ANY OTHER RIGHT UNDER THE ACT. WHILE THE COMPLAINANT MAKES THE ALLEGATION THAT HE WAS DISCHARGED CONTRARY TO SECTION 58(A), THERE IS NOTHING IN THE MATERIAL BEFORE US WHICH SUPPORTS THIS CLAIM IN ANY WAY. INDEED, THE WHOLE THRUST OF THE STATEMENT AND SUPPORTING MATERIAL IS WITH RESPECT TO WHETHER THE COMPLAINANT SHOULD HAVE BEEN DISCHARGED BECAUSE OF EITHER HIS FAILURE TO JUSTIFY AN EARLIER ABSENCE AND BECAUSE OF HIS SUBSEQUENT REFUSAL TO REPORT FOR WORK ON A SATURDAY. IN THESE CIRCUMSTANCES, WE ARE OF THE OPINION THAT THE COMPLAINT IN SO FAR AS IT RELATES TO THE RESPONDENT COMPANY DOES NOT MAKE OUT A PRIMA FACIE CASE FOR THE REMEDY REQUESTED AND, PURSUANT TO SUBSECTION (1) OF SECTION 46 OF THE BOARD'S RULES OF PROCEDURE, THE COMPLAINT IS ACCORDINGLY DISMISSED AGAINST STEINBERG'S LIMITED OTHERWISE KNOWN AS MIRACLE FOOD MART.

4. WE TURN NOW TO DEAL WITH THE COMPLAINT IN SO FAR AS IT RELATES TO THE RESPONDENT TRADE UNION. THE COMPLAINANT, O'DONNELL, WAS EMPLOYED IN STEINBERG'S LIMITED MIRACLE FOOD MART IN OAKVILLE FROM AUGUST 1969 UNTIL HIS DISCHARGE ON JULY 20, 1971. THE DISCHARGE AROSE OUT OF THE FOLLOWING CIRCUMSTANCES. ON JULY 5, 1971 HE COULD NOT REPORT FOR WORK BECAUSE HE HAD SUFFERED A SEVERE SUN BURN OVER THE WEEKEND. WHEN HE WENT IN TO WORK ON JULY 6TH, HE WAS SENT HOME UNTIL HE COULD GET A DOCTOR'S CERTIFICATE. A DOCTOR'S CERTIFICATE WAS PRODUCED ON JULY 8TH, BUT THE COMPLAINANT WAS STILL NOT PERMITTED

TO GO TO WORK. SUBSEQUENT DISCUSSIONS ENSUED BETWEEN THE STORE MANAGER, THE AREA SUPERVISOR, MR. DERRICK MORRISY, A UNION REPRESENTATIVE AND THE COMPLAINANT. AS A RESULT OF THESE DISCUSSIONS A SETTLEMENT WAS ARRIVED AT WHEREBY IT WAS AGREED THAT THE COMPLAINANT WAS TO REPORT FOR WORK AT THE BURLINGTON STORE OF THE RESPONDENT COMPANY AND WORK THE "BALANCE" OF THE WEEK. THE COMPLAINANT WAS ALSO TO RECEIVE SEVEN DAYS' PAY. IT WAS THE COMPLAINANT'S UNDERSTANDING OF THE SETTLEMENT THAT HE WAS TO WORK ONLY THE BALANCE OF HIS SCHEDULE AT THE OAKVILLE STORE WHICH DID NOT INCLUDE SATURDAY. ACCORDINGLY, HE DID NOT REPORT FOR WORK AT THE BURLINGTON STORE ON SATURDAY. HE WAS TELEPHONED BOTH BY THE STORE MANAGER AND BY MR. MORRISY ON SATURDAY MORNING BUT REFUSED TO GO IN, DESPITE THE FACT THAT MR. MORRISY INTIMATED TO HIM THAT HE WOULD BE IN DIFFICULTY IF HE DID NOT GO TO WORK. WHEN HE REPORTED FOR WORK ON TUESDAY, JULY 20TH, HE WAS CALLED TO A MEETING ATTENDED BY THE AREA SUPERVISOR, THE STORE MANAGER AND MR. MORRISY. HIS DISCHARGE FOLLOWED, AT WHICH TIME HE WAS INFORMED BY MORRISY THAT HE COULD PUT IN A GRIEVANCE BUT, ACCORDING TO THE COMPLAINANT, THAT IT WOULD NOT DO HIM ANY GOOD.

5. THE COMPLAINANT FILED A GRIEVANCE IN CONNECTION WITH HIS DISCHARGE WHICH WAS TURNED DOWN BY THE DISTRICT COUNCIL OF ONTARIO AMALGAMATED MEAT CUTTERS. HE WAS SO ADVISED OF THIS BY MR. MORRISY, THE SECRETARY-TREASURER OF THE DISTRICT COUNCIL BY LETTER DATED JULY 26TH. THE LETTER READS IN PART AS FOLLOWS:

AFTER DUE DELIBERATION AND REVIEWING ALL THAT TOOK PLACE WHICH LED UP TO THE COMPANY'S DECISION, IT IS MY OPINION THAT THE DECISION IS ONE THAT CANNOT BE CALLED UNJUST, AND THEREFORE DOES NOT MERIT FURTHER PROCEDURE.

SHOULD YOU DISAGREE WITH MY DECISION YOU ARE INVITED TO STATE YOUR REASON FOR THE BENEFIT OF THE JOINT EXECUTIVE BOARD, WHICH WILL MEET ON TUESDAY, AUGUST 10TH, 1971 - 8:00 P.M. AT:

THE LABOUR CENTRE,
SUITE 200,
15 GERVAIS DRIVE,
DON MILLS, ONT.

YOU ARE REMINDED THAT IN THE EVENT THAT THE JOINT EXECUTIVE BOARD DOES NOT AGREE TO FURTHER PROCESSING OF YOUR GRIEVANCE, YOU HAVE THE RIGHT TO APPEAL TO THE INTERNATIONAL EXECUTIVE BOARD.

6. THE COMPLAINANT APPEALED TO THE JOINT EXECUTIVE BOARD AND WAS PRESENT AT ITS MEETING AT THE RESPONDENT UNION'S ONTARIO HEAD

OFFICE ON AUGUST 10, 1971. A REPRESENTATIVE FROM STEINBERG'S WAS ALSO PRESENT. IN HIS STATEMENT THE COMPLAINANT SAYS THAT HIS WITNESS COULD NOT BE PRESENT BUT THAT HE DID NOT ASK FOR A POSTPONEMENT. THE COMPLAINANT CLAIMS THAT THINGS WERE SAID AT THE MEETING WHICH WERE UNTRUE. HIS APPEAL WAS TURNED DOWN. THE COMPLAINANT THEN APPEALED TO THE INTERNATIONAL OFFICE IN CHICAGO IN A LETTER DATED AUGUST 23RD, IN WHICH HE SET OUT IN GREAT DETAIL THE ESSENCE OF HIS COMPLAINT.

7. IN ACKNOWLEDGING RECEIPT OF THE APPEAL, THE SECRETARY - TREASURER INDICATED THAT HE WAS REFERRING THE MATTER TO THE PRESIDENT AND ON SEPTEMBER 1ST THE PRESIDENT WROTE TO THE COMPLAINANT INDICATING THAT HE WAS REFERRING THE MATTER TO MR. PATHE, THE PRESIDENT OF THE ONTARIO RETAIL COUNCIL OF THE UNION FOR THE PURPOSE OF MAKING A THOROUGH INVESTIGATION. MR. PATHE REPORTED TO THE PRESIDENT BY LETTER DATED OCTOBER 6, 1971. A PERUSAL OF THE LETTER REVEALS THAT MR. PATHE DID INDEED UNDERTAKE AN EXTENSIVE INVESTIGATION. IT WAS HIS CONCLUSION THAT THE COMPLAINANT AGREED TO THE SETTLEMENT OF THE GRIEVANCE AT THE OAKVILLE STORE BUT SUBSEQUENTLY HAD A CHANGE OF HEART AS A RESULT OF A DISCUSSION WITH A UNION STEWARD. HE ALSO STATED THAT HE HAD HAD A LONG TALK WITH THE COMPLAINANT AND EXPLAINED TO HIM WHY HE DID NOT BELIEVE THAT THE ARBITRATION COULD BE WON. IT APPEARS, FURTHER, FROM A LETTER FROM PATHE TO THE SECRETARY-TREASURER OF THE UNION ON NOVEMBER 3, 1971 THAT HE HAD SUGGESTED TO THE COMPLAINANT THAT THE MATTER WAS GOING TO TAKE SOME TIME TO RESOLVE WITHIN THE UNION AND THAT PATHE COULD PROBABLY GET HIM ANOTHER JOB IN KITCHENER WITH ANOTHER EMPLOYER. HOWEVER, THE CONDITION IMPOSED BY THE COMPLAINANT, NAMELY, THAT HE WOULD ONLY MOVE TO KITCHENER IF HE COULD GET \$160.00 A WEEK WAS IMPOSSIBLE TO FULFILL, SINCE THE TOP RATE FOR GROCERY CLERKS IN THE UNION'S AGREEMENT WAS \$158.00. AS A RESULT OF THE REPORT, THE PRESIDENT NOTIFIED THE COMPLAINANT THAT IT WAS HIS DECISION THAT THE UNION HAD DONE EVERYTHING POSSIBLE FOR THE COMPLAINANT. THE PRESIDENT WENT ON TO STATE, "I THINK IF YOU WILL READ THE ATTACHED REPORT AND WEIGH ALL THE FACTS, YOU WILL AGREE WITH ME".

8. IN ORDER TO SUCCEED AGAINST THE RESPONDENT UNION, THE COMPLAINANT MUST ESTABLISH THAT THE UNION ACTED IN AN ARBITRARY OR DISCRIMINATORY MANNER OR IN BAD FAITH IN REPRESENTING THE COMPLAINANT AS A MEMBER OF THE BARGAINING UNIT. THE GIST OF THE COMPLAINANT'S CASE IS THAT THE UNION DISCRIMINATED AGAINST HIM BECAUSE HE DID NOT WANT TO GO FROM THE OAKVILLE STORE TO THE BURLINGTON STORE AND IT WAS NOT MADE PLAIN TO HIM THAT HE WAS REQUIRED TO WORK ON SATURDAY AT THE BURLINGTON STORE. HE SUGGESTS THAT IF HE HAD KNOWN OF THIS REQUIREMENT, HE WOULD NOT HAVE ACCEPTED THE SETTLEMENT. HE ALLEGES THAT THE SETTLEMENT WAS MORE OR LESS FORCED ON HIM BY MR. MORRISY. THE QUESTION BEFORE THE BOARD AT THIS TIME IS WHETHER, ON THE BASIS OF MR. O'DONNELL'S STATEMENT AND THE ACCOMPANYING MATERIAL, THERE IS

ANY EVIDENCE TO SUGGEST THAT THE RESPONDENT UNION WAS IN VIOLATION OF SECTION 60 OF THE LABOUR RELATIONS ACT. WE ARE UNABLE TO CONCLUDE THAT THERE IS. CLEARLY THE UNION DID NOT ACT IN AN ARBITRARY MANNER. EVEN IF WE WERE TO ASSUME THAT THERE WAS SOMETHING INITIALLY WRONG IN THE WAY IN WHICH MR. MORRISY HANDLED THE ORIGINAL GRIEVANCE, THERE IS NO SUGGESTION THAT IT WAS DONE IN AN ARBITRARY FASHION. THERE WAS FULL DISCUSSION WITH THE COMPANY REPRESENTATIVES, OUT OF WHICH AROSE A SETTLEMENT WHICH THE COMPLAINANT AGREED TO. EVEN IF THE COMPLAINANT WAS MISLED AS TO THE TERMS OF THE SETTLEMENT, THERE WAS NOTHING ARBITRARY ABOUT IT.

9. IN ANY EVENT, FOLLOWING HIS SUBSEQUENT DISCHARGE, HE WAS GIVEN AN OPPORTUNITY TO APPEAL MR. MORRISY'S DECISION NOT TO PROCESS THE GRIEVANCE AND HE AVAILED HIMSELF OF THAT RIGHT. HE APPEARED BEFORE THE JOINT BOARD AND IT IS QUITE CLEAR THAT THE BOARD CONDUCTED AN INVESTIGATION, HEARD MR. O'DONNELL AND ALSO A REPRESENTATIVE FROM THE RESPONDENT COMPANY, AND THEN CAME TO A DECISION. WHILE IT IS ALLEGED BY THE COMPLAINANT THAT HIS WITNESS DID NOT TURN UP, HE ADMITS THAT HE DID NOT ASK FOR A POSTPONEMENT OF THE INVESTIGATION BEFORE THE JOINT BOARD. CLEARLY THE JOINT BOARD DID NOT ACT IN AN ARBITRARY FASHION.

10. FINALLY, HE APPEALED TO THE INTERNATIONAL OFFICE. ONCE AGAIN THE PRESIDENT REACHED A DECISION ONLY AFTER A THOROUGH INVESTIGATION BY A SENIOR OFFICER OF THE UNION, DURING WHICH THE COMPLAINANT HAD EVERY OPPORTUNITY TO PRESENT HIS SIDE OF THE CASE. CLEARLY THE DECISION OF THE PRESIDENT WAS NOT AN "ARBITRARY" DECISION IN ANY SENSE OF THE WORD.

11. NOR, IN OUR VIEW, CAN IT BE SAID THAT THE MATERIAL BEFORE US DISCLOSES IN ANY WAY THAT THE UNION ACTED IN A DISCRIMINATORY FASHION TOWARDS THE COMPLAINANT. THERE IS NOTHING TO SUGGEST THIS HIS GRIEVANCE WAS DEALT WITH BY THE UNION AT ANY STAGE OF THE PROCEEDINGS DIFFERENTLY FROM A GRIEVANCE FILED BY ANY OTHER MEMBER OF THE UNION. EVEN IF WE ARE TO ASSUME THAT MR. MORRISY DID PUT SOME PRESSURE ON THE COMPLAINANT TO ACCEPT THE POSITION AT THE BURLINGTON STORE, THIS DOES NOT CONSTITUTE DISCRIMINATION, UNLESS IT COULD BE SHOWN THAT MR. MORRISY WOULD HAVE ACTED DIFFERENTLY IF THE EMPLOYEE IN QUESTION HAD BEEN SOMEONE OTHER THAN MR. O'DONNELL. FURTHERMORE, THE FACT THAT THE COMPLAINANT MISUNDERSTOOD THE TERMS OF SETTLEMENT CANNOT IN ANY WAY CONSTITUTE DISCRIMINATION ON THE PART OF THE RESPONDENT TRADE UNION. FINALLY, EVEN IF MR. MORRISY'S HANDLING OF THE SITUATION COULD IN SOME WAY BE SAID TO AMOUNT TO DISCRIMINATION, THE COMPLAINANT HAD EVERY OPPORTUNITY TO CORRECT THIS SITUATION IN HIS SUBSEQUENT APPEALS TO THE JOINT BOARD AND THE PRESIDENT. THERE IS ABSOLUTELY NOTHING IN THE MATERIAL BEFORE US WHICH WOULD WARRANT AN INFERENCE OF ANY KIND THAT THE JOINT BOARD OR THE PRESIDENT ACTED IN A DISCRIMINATORY MANNER.

12. ALL THAT HAS BEEN SAID ABOVE APPLIES EQUALLY TO THE QUESTION OF WHETHER THE UNION ACTED IN BAD FAITH. THE WHOLE COURSE OF CONDUCT OF ALL THE UNION PERSONNEL INVOLVED SUGGESTS NOTHING BUT GOOD FAITH ON THE PART OF THE UNION OFFICERS. THEIR CONCLUSION WAS, AFTER INVESTIGATING ALL THE FACTS, THAT THEY COULD NOT WIN THE GRIEVANCE IF IT PROCEEDED TO ARBITRATION. WE ARE NOT CONCERNED HERE WITH WHETHER OR NOT THAT WAS A CORRECT DECISION. AS WAS SAID BY THE BOARD IN RUTHERFORD'S DAIRY LIMITED, [1972] OLRB REP. (MARCH), "... A UNION MAY MAKE A MISTAKE IN THE MANNER IN WHICH IT REPRESENTS EMPLOYEES; HOWEVER, IF THAT MISTAKE WAS MADE IN GOOD FAITH AND WITHOUT MALA FIDES, IT CANNOT BE FOUND THAT THE UNION HAS VIOLATED THE PROVISIONS OF SECTION 60". IN OTHER WORDS, IF THE UNION HAS IN GOOD FAITH DECIDED NOT TO PROCEED WITH THE GRIEVANCE BECAUSE, IN THEIR OPINION, THEY WOULD NOT SUCCEED BEFORE AN ARBITRATOR OR ARBITRATION BOARD, THERE HAS BEEN NO BREACH OF SECTION 60 BY THE UNION. THE SECTION DOES NOT IMPOSE AN ABSOLUTE DUTY ON THE UNION TO CARRY EVERY GRIEVANCE FILED BY AN EMPLOYEE THROUGH TO THE ARBITRATION PROCESS.

13. IN CONCLUSION, THEN, AND BY WAY OF SUMMARY, WE ARE UNABLE TO FIND ON THE BASIS OF THE MATERIAL BEFORE US ANY EVIDENCE THAT WOULD SUPPORT A FINDING THAT THE RESPONDENT UNION ACTED IN AN ARBITRARY OR DISCRIMINATORY MANNER OR IN BAD FAITH IN ITS REPRESENTATION OF THE COMPLAINANT. WE ARE THEREFORE OF THE OPINION THAT THE COMPLAINT DOES NOT MAKE OUT A PRIMA FACIE CASE FOR THE REMEDY REQUESTED AND, PURSUANT TO SUBSECTION (1) OF SECTION 46 OF THE BOARD'S RULES OF PROCEDURE, THE COMPLAINT IN SO FAR AS IT RELATES TO THE RESPONDENT UNION IS ALSO DISMISSED.

1781-71-U: LOCAL 97, WOOD, WIRE AND METAL LATHERS INTERNATIONAL UNION (APPLICANT) V. NORTHDOWN DRYWALL AND CONSTRUCTION LIMITED (RESPONDENT).

- AND -

1782-71-U: LOCAL 97 OF THE WOOD, WIRE AND METAL LATHERS INTERNATIONAL UNION (APPLICANT) V. LOCAL 562 OF THE WOOD, WIRE AND METAL LATHERS INTERNATIONAL UNION (RESPONDENTS).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS P. J. O'KEEFE AND J.E.C. ROBINSON, Q.C.

APPEARANCES AT THE HEARING: D. A. PEPIATT AND W. JOHNSTON FOR THE APPLICANT; R. D. PERKINS FOR THE RESPONDENT NORTHDOWN DRYWALL; A. M. MINSKY FOR THE RESPONDENT LOCAL 562.

DECISION OF THE BOARD:

MAY 8, 1972.

1. AT THE HEARING IN THIS MATTER THE BOARD DIRECTED THAT THESE APPLICATIONS BE HEARD TOGETHER.

2. THE APPLICANT HAS ASKED LEAVE TO PROSECUTE THE RESPONDENTS AND HAS ALLEGED THAT THE RESPONDENTS HAVE VIOLATED SECTION 61 OF THE LABOUR RELATIONS ACT IN THAT THEY SOUGHT BY INTIMIDATION OR COERCION TO COMPEL PERSONS TO BE MEMBERS OF LOCAL 562 OF THE WOOD, WIRE AND METAL LATHERS INTERNATIONAL UNION AND CEASE TO BE MEMBERS OF LOCAL 97 OF THE WOOD, WIRE AND METAL LATHERS INTERNATIONAL UNION.

3. THE FACTS OF THESE CASES ARE NOT IN DISPUTE. THE FACTS AS AGREED TO BY THE PARTIES ARE AS FOLLOWS:

1. NORTHDOWN DRYWALL AND CONSTRUCTION LIMITED WAS INCORPORATED IN JANUARY 1970.
2. NORTHDOWN COMMENCED HIRING LATHERS, MEMBERS OF LOCAL 562, IN MAY 1970.
3. NORTHDOWN SIGNED A COLLECTIVE AGREEMENT WITH LOCAL 562 ON NOVEMBER 26, 1970 HAVING VOLUNTARY RECOGNIZED LOCAL 562'S RIGHT TO REPRESENT LATHERS EMPLOYED BY IT IN THE ERECTION OF 'DRYWALL'.
4. GAMBIN BROTHERS LIMITED, DONALDSON-BARRON LIMITED AND CESARONI BROTHERS ARE THREE COMPANIES WHICH HAVE ENGAGED IN THE LATHING AND DRYWALL BUSINESS FOR SEVERAL YEARS, UNDER COLLECTIVE AGREEMENTS WITH LOCAL 97. THE LAST COLLECTIVE AGREEMENT BETWEEN LOCAL 97 AND EACH OF THE THREE COMPANIES EXPIRED ON APRIL 30, 1971 AND A NEW AGREEMENT HAS BEEN NEGOTIATED TO WHICH THE THREE COMPANIES ARE PARTIES.
5. IN JANUARY 1971 THE THREE COMPANIES ACQUIRED CONTROL OF NORTHDOWN DRYWALL AND CONSTRUCTION LIMITED THROUGH A TRANSFER OF SHARES AND NORTHDOWN TOOK OVER A SUBSTANTIAL PART OF THE BUSINESS OF EACH OF THE THREE FIRMS. EMPLOYEES, MEMBERS OF LOCAL 97, FORMERLY EMPLOYED BY THE THREE COMPANIES WERE HIRED BY NORTHDOWN AND MINGLED WITH THE NORTHDOWN EMPLOYEES, MEMBERS OF LOCAL 562.
6. ON JANUARY 8, 1971 BRUNO GAMBIN, WHO WAS A MEMBER OF THE BARGAINING COMMITTEE IN NEGOTIATIONS BETWEEN LOCAL 97 AND THE THREE COMPANIES (AMONG OTHERS) WROTE A LETTER TO LOCAL 97 WHICH ADVISED THAT "THE FIRMS OF GAMBIN BROTHERS LIMITED, CESARONI BROTHERS AND DONALDSON-BARRON LIMITED, WILL BE AMALGAMATED UNDER THE NAME OF NORTHDOWN DRYWALL & CONSTRUCTION LTD." EFFECTIVE JANUARY 1, 1971.

4. ON JULY 7, 1971 THE GENERAL PRESIDENT OF THE LATHERS INTERNATIONAL UNION WROTE A LETTER TO LOCAL 97, WHICH READS IN PART AS FOLLOWS:

...THEREFORE, IN ORDER TO BRING STABILITY ONCE AGAIN TO THE TORONTO AREA, I AM RENDERING THE FOLLOWING INTERIM DECISION FOR A PERIOD OF NINETY (90 DAYS, DURING WHICH TIME MORE EXTENSIVE STUDIES MAY BE TAKEN AND WITH A VIEW TOWARD MERGING BOTH LOCAL UNIONS INTO ONE LOCAL UNION WITH A COLLECTIVE BARGAINING AGREEMENT THAT WILL MAKE PROVISIONS FOR ALL CLASSIFICATIONS.

DECISION

1. ALL WORK INVOLVED IN DRYWALL PARTITION ASSEMBLY WILL BE CONDUCTED UNDER THE TERMS AND CONDITIONS OF LOCAL 562'S COLLECTIVE BARGAINING AGREEMENT WITH THE FOLLOWING EXCEPTIONS:

- A. ALL GYPSUM DRYWALL BOARDS, 4' x 8' AND LARGER, TO BE INSTALLED BY MEMBERS OF LOCAL 562.
- B. ALL METAL STUDS WHICH RECEIVE GYPSUM BOARD TO BE INSTALLED BY MEMBERS OF LOCAL 97.
- C. FOREMEN CAN BE SELECTED BY THE EMPLOYER, EITHER FROM LOCAL 562 OR 97.

IF YOU HAVE ANY FURTHER QUESTIONS RELATIVE TO THIS MATTER, PLEASE ADVISE.

WITH KIND PERSONAL REGARDS, I AM

SINCERELY AND FRATERNALLY,

ROBERT A. GEORGINE
GENERAL PRESIDENT.

5. ON AUGUST 25, 1971, THE GENERAL PRESIDENT OF THE LATHERS INTERNATIONAL UNION WROTE A LETTER TO LOCAL 97 AND LOCAL 562 WHICH READS AS FOLLOWS:

THIS IS IN FOLLOW-UP TO MY LETTER OF JULY 7TH, 1971 AND THE ATTACHED DECISION BEARING THE SAME DATE WITH RESPECT TO ALLOCATION OF WORK JURISDICTION BETWEEN LOCAL UNIONS 97 AND 562 OF TORONTO, CANADA.

IT HAS BEEN BROUGHT TO MY ATTENTION THAT MEETINGS HAVE BEEN HELD OF ALL INTERESTED PARTIES; THAT MY DECISION OF JULY 7TH HAS NOT BEEN MADE EFFECTIVE AS OF THIS DATE; THAT AN ATMOSPHERE OF CONFUSION AND UNCERTAINTY STILL EXISTS BETWEEN THE TWO LOCAL UNIONS IN TORONTO. THERE HAVE BEEN DISAGREEMENTS AS TO INTERPRETATION OF MY ORDER. THE WELFARE OF THE LATHING INDUSTRY AND THE LATHERS' UNION AND ITS MEMBERSHIP IN TORONTO, CANADA IS NOW IN JEOPARDY UNDER THESE CONDITIONS. THEREFORE, IN ACCORDANCE WITH THE AUTHORITY GRANTED ME BY THE LIU CONSTITUTION, I AM MODIFYING MY ORDER OF JULY 7TH TO BE AS FOLLOWS:

1. ALL WORK INVOLVED IN DRYWALL PARTITION ASSEMBLY IN ITS ENTIRETY, INCLUDING THE INSTALLATION OF ALL TRACK, STUDS, GYPSUMBOARD AND ACCESSORIES, SHALL NOW BECOME THE JURISDICTION OF LOCAL 562, ON ALL JOBS INCLUDING WHAT IS COMMONLY REFERRED TO IN THE TORONTO AREA AS RESIDENTIAL AND COMMERCIAL WORK.
2. LOCALS 97 AND 562 ARE ORDERED TO IMMEDIATELY BEGIN NEGOTIATIONS FOR A MERGER INTO ONE LOCAL UNION.
3. INTERNATIONAL REPRESENTATIVE KEN WELLER IS ASSIGNED TO AID AND ASSIST BOTH LOCAL UNIONS IN THE IMPLEMENTATION OF THIS ORDER.

WITH KIND PERSONAL REGARDS I AM,

SINCERELY AND FRATERNALLY,

ROBERT A. GEORGINE
GENERAL PRESIDENT

6. IN NOVEMBER 1971 BUSINESS REPRESENTATIVES OF LOCAL 562 COMPLAINED TO NORTHDOWN THAT IT WAS IN VIOLATION OF ITS COLLECTIVE AGREEMENT IN THAT A SUBSTANTIAL NUMBER OF ITS EMPLOYEES WERE NOT MEMBERS OF LOCAL 562. OFFICERS OF NORTHDOWN INFORMED THE EMPLOYEES WHOSE NAMES APPEAR IN THE APPLICANT'S COMPLAINT THAT THEY WOULD HAVE TO BECOME MEMBERS OF LOCAL 562 OR BE DISCHARGED.

7. ON NOVEMBER 16, 1971 LOCAL 97 APPLIED FOR CONCILIATION SERVICES WITH RESPECT TO NORTHDOWN. THE APPLICATION WAS GRANTED AND AT A MEETING WITH THE CONCILIATION OFFICER, S. BILLINGTON, ON FEBRUARY 15, 1972, NORTHDOWN AGREED TO SIGN A COLLECTIVE AGREEMENT WITH LOCAL

97 COVERING LATHING BUT REFUSED TO INCLUDE THE ERECTION OF DRYWALL SYSTEMS IN SUCH AGREEMENT ON THE GROUNDS THAT IT WAS ALREADY COVERED IN THE LOCAL 562 AGREEMENT.

8. ALTHOUGH OFFICERS OF NORTHDOWN WARNED EMPLOYEES WHO WERE NOT MEMBERS OF LOCAL 562 (LISTED IN THE APPLICANT'S COMPLAINT) THAT THEY WOULD BE DISCHARGED IF THEY DID NOT BECOME MEMBERS OF LOCAL 562, ON MARCH 13, 1972 ALL OF THOSE EMPLOYEES COMMENCED STRIKING AGAINST NORTHDOWN AND THE STRIKE HAS CONTINUED UP TO THE PRESENT TIME. NORTHDOWN HAS CONTINUED TO OPERATE USING EXCLUSIVELY EMPLOYEES WHO ARE MEMBERS OF LOCAL 562.

9. LOCAL 562 INFORMED THE EMPLOYEES WHOSE NAMES APPEAR IN THE APPLICANT'S COMPLAINT AGAINST LOCAL 562 THAT TO WORK FOR NORTHDOWN ON DRYWALL SYSTEMS THEY WOULD HAVE TO BECOME MEMBERS OF LOCAL 562 OR BE DISCHARGED BY NORTHDOWN.

10. THE RELEVANT PROVISIONS OF THE CONSTITUTION OF THE WOOD, WIRE AND METAL LATHERS INTERNATIONAL UNION (LIU) READ AS FOLLOWS:

POWERS AND DUTIES OF THE GENERAL PRESIDENT OF THE L.I.U.

SECTION 14. THE GENERAL PRESIDENT SHALL HAVE
THE FOLLOWING POWERS AND DUTIES:

SECTION 17. TO DECIDE ALL QUESTIONS OF LAW,
CRAFT, RIGHTS, JURISDICTION OR EQUITY. DECISIONS
RENDERED BY THE GENERAL PRESIDENT SHALL BE SUBJECT
TO APPEAL TO THE EXECUTIVE COUNCIL AND FROM THE
EXECUTIVE COUNCIL TO THE CONVENTION; PROVIDED,
HOWEVER, THAT EACH APPEAL BE SET FORTH IN WRITING
AND FILED IN THE MANNER AND WITHIN THE TIME MORE
FULLY DESCRIBED HEREINAFTER AS APPLYING TO APPEALS.

SECTION 116. LOCAL UNIONS OF THE L.I.U. ARE
OBLIGATED AND REQUIRED TO ABIDE BY THE CONSTITUTION
OF THE L.I.U., THE LAWS AND POLICIES OF THE L.I.U.,
THE DECISIONS OF THE GENERAL PRESIDENT OF THE L.I.U.
... LOCAL UNIONS MUST EXHAUST ALL OF THE PROCEDURES
AND REMEDIES WITHIN THE CONSTITUTION OF THE L.I.U.,
AND OF STATE, PROVINCIAL AND DISTRICT COUNCILS, BEFORE
HAVING RESORT TO COURTS OR OTHER TRIBUNALS OF A LEGAL
OR QUASI-LEGAL NATURE AS TO ANY MATTER PERTAINING TO
THE L.I.U. OR TO SAID LOCAL UNION OR TO ANY STATE,
PROVINCIAL OR DISTRICT COUNCIL OF THE L.I.U. ...

11. IT WAS THE APPLICANT'S ARGUMENT THAT PURSUANT TO THE PROVISIONS OF SECTION 55 OF THE LABOUR RELATIONS ACT NORTHDOWN DRYWALL AND CONSTRUCTION LIMITED BECAME THE SUCCESSOR OF GAMBIN BROTHERS LIMITED, DONALDSON-BARRON LIMITED AND CESARONI BROTHERS AND ACCORDINGLY NORTHDOWN DRYWALL AND CONSTRUCTION LIMITED BECAME BOUND BY THE COLLECTIVE AGREEMENT BETWEEN LOCAL 97 AND THE THREE COMPANIES AS IF IT HAD BEEN A PARTY THERETO. THE APPLICANT FURTHER ARGUED THAT NORTHDOWN DRYWALL AND CONSTRUCTION LIMITED HAD NO RIGHT TO SELECT LOCAL 562 AS THE UNION IT WOULD DEAL WITH.

12. APART FROM THE EFFECT OF THE DECISION OF THE GENERAL PRESIDENT OF THE LIU AS SET OUT IN THE LETTERS DATED JULY 7TH AND AUGUST 25TH AND THE PROVISIONS OF THE CONSTITUTION OF THE LIU WHICH ARE SET OUT IN PART ABOVE, IT COULD NOT BE SUCCESSFULLY ARGUED THAT THE RESPONDENT COMPANY COULD UNILATERALLY SELECT WHICH TRADE UNION IT WOULD DEAL WITH. BOTH LOCAL 97 AND LOCAL 562 HAD CONFLICTING CLAIMS WHICH MIGHT HAVE BEEN SETTLED PURSUANT TO THE PROVISIONS OF SECTION 55 OF THE LABOUR RELATIONS ACT AT ANY TIME AFTER JANUARY 1, 1971. THE CLAIM OF LOCAL 562 AROSE AS A RESULT OF THE COLLECTIVE AGREEMENT ENTERED INTO ON NOVEMBER 26, 1970 FOLLOWING VOLUNTARY RECOGNITION. SINCE THIS AGREEMENT HAD BEEN IN FORCE MORE THAN A YEAR PRIOR TO THE DATE OF THIS APPLICATION THE BOARD HAD NO POWER TO TERMINATE THAT AGREEMENT PURSUANT TO THE PROVISIONS OF SECTION 52 OF THE ACT AND THERE WAS NO EVIDENCE BEFORE THE BOARD WHICH WOULD ESTABLISH THAT THE AGREEMENT HAD BEEN ENTERED INTO FRAUDULENTLY. ON THE OTHER HAND, LOCAL 97 BASED ITS CLAIM IN THIS MATTER ON THE FACT THAT IT HAD BEEN A PARTY TO COLLECTIVE AGREEMENTS WITH THE THREE COMPANIES WHO SOLD A PORTION OF THEIR BUSINESS TO THE RESPONDENT COMPANY. THE CLAIMS OF BOTH UNIONS WERE VALID FROM THE POINT OF VIEW OF THE LABOUR RELATIONS ACT, HOWEVER NONE OF THE PARTIES SAW FIT TO APPLY TO THE BOARD UNDER THE PROVISIONS OF SECTION 55 OF THE ACT TO HAVE THEIR CONFLICTING CLAIMS RESOLVED.

13. APART FROM THE EFFECT THAT THE DECISIONS OF THE GENERAL PRESIDENT OF THE LIU MIGHT HAVE HAD ON THE SITUATION, IT WOULD SEEM THAT THE BOARD COULD HAVE EITHER AMENDED THE BARGAINING UNITS OF THE TWO UNIONS AND THEREBY RESOLVE THE CONFLICT BETWEEN THEM OR COULD HAVE DIRECTED A VOTE TO DETERMINE WHICH OF THE TWO UNIONS SHOULD REPRESENT THE EMPLOYEES OF THE RESPONDENT COMPANY. HOWEVER, THERE IS NO APPLICATION TO THE BOARD FOR EITHER OF THESE REMEDIES.

14. IT WOULD APPEAR FROM THE LETTER OF JULY 7TH FROM THE GENERAL PRESIDENT THAT THE GENERAL PRESIDENT ATTEMPTED, AS AN INTERIM MEASURE, TO DIVIDE THE WORK BETWEEN TWO COMPETING LOCALS. HOWEVER, THE GENERAL PRESIDENT'S EFFORT IN THIS REGARD WOULD APPEAR TO HAVE FAILED. ON AUGUST 25, 1971 THE GENERAL PRESIDENT AWARDED ALL THE WORK PERFORMED BY THE RESPONDENT COMPANY TO LOCAL 562.

15. FOLLOWING THE DECISION OF THE GENERAL PRESIDENT DATED AUGUST 25, 1971, WHICH DECISION WAS BINDING UPON BOTH LOCAL 97 AND LOCAL 562, LOCAL 562 TOOK THE POSITION THAT THE RESPONDENT COMPANY WAS BOUND BY THE PROVISIONS OF THE COLLECTIVE AGREEMENT BETWEEN LOCAL 562 AND THE RESPONDENT COMPANY AND ACCORDINGLY REQUESTED THAT THE RESPONDENT COMPANY REQUIRE ALL ITS EMPLOYEES TO BECOME MEMBERS OF LOCAL 562. AS INDICATED EARLIER, THE RESPONDENT COMPANY TOOK THE NECESSARY STEPS TO COMPLY WITH THE REQUEST OF LOCAL 562. LOCAL 562 ALSO ATTEMPTED TO CAUSE THE EMPLOYEES OF THE RESPONDENT COMPANY TO BECOME MEMBERS OF LOCAL 562 IN COMPLIANCE WITH THE PROVISIONS OF THE COLLECTIVE AGREEMENT BETWEEN LOCAL 562 AND THE RESPONDENT COMPANY. THE RESPONDENTS TOOK THIS ACTION TO ENFORCE THE AGREEMENT BETWEEN THEM AS A RESULT OF THE DECISION OF THE GENERAL PRESIDENT WHICH AWARDED ALL THE DRYWALL SYSTEMS WORK PERFORMED BY THE RESPONDENT COMPANY TO LOCAL 562. IT WOULD APPEAR FROM A READING OF THE CONSTITUTION OF THE LIU THAT PRIMA FACIE THE GENERAL PRESIDENT HAD THE NECESSARY POWER TO DECIDE THIS QUESTION OF JURISDICTION UNDER THE PROVISIONS OF SECTION 17 QUOTED ABOVE. UNDER THE PROVISIONS OF SECTION 116 IT IS EQUALLY CLEAR THAT THE LOCAL UNIONS WERE BOUND BY THE DECISION OF THE GENERAL PRESIDENT IN THIS REGARD. WHILE THERE IS AN APPEAL PROCEDURE INCORPORATED INTO THE CONSTITUTION OF THE LIU, THERE WAS NO EFFORT ON THE PART OF LOCAL 97 TO CHALLENGE THE RULING OF THE GENERAL PRESIDENT.

16. WE NEED NOT DETERMINE WHETHER LOCAL 97 IS BOUND BY THE RULING OF THE GENERAL PRESIDENT OF THE LIU OR INDEED WHETHER, IN ANOTHER PROCEEDING, THE BOARD WOULD FOLLOW THE RULING OF THE GENERAL PRESIDENT IN ARRIVING AT ITS DECISION. THE QUESTION BEFORE US IS WHETHER THERE WAS ANY MALA FIDES ON THE PART OF THE RESPONDENTS IN ADOPTING THE COURSE OF ACTION THEY DID. IF THE RESPONDENTS ACTED IN GOOD FAITH THE BOARD SHOULD EXERCISE ITS DISCRETION IN THIS MATTER AND REFUSE TO GRANT THE APPLICATION FOR CONSENT TO PROSECUTE. ON THE FACTS SET OUT ABOVE, WE FIND THAT THE RESPONDENTS ACTED IN GOOD FAITH WHEN THEY ACCEPTED THE DECISION OF THE GENERAL PRESIDENT OF THE LIU AND ABIDED BY THE PROVISIONS OF THE COLLECTIVE AGREEMENT BETWEEN THEM.

17. WHILE THE DECISION OF THE GENERAL PRESIDENT OF THE LIU CANNOT STRICTLY BE BINDING ON THIRD PARTIES, IT IS BINDING ON THE LOCAL UNIONS OF THE LIU, SUBJECT TO THE APPEAL PROCEDURE SET OUT IN THE CONSTITUTION. ACCORDINGLY, THE APPLICANT IN THIS CASE, HAVING FAILED TO ABIDE BY THE DECISION OF THE GENERAL PRESIDENT, CANNOT, IN AN APPLICATION FOR CONSENT TO PROSECUTE, CRITICIZE THE RESPONDENTS FOR ACCEPTING SUCH A RULING. IN MAKING THIS APPLICATION THE APPLICANT IS ASKING THE BOARD TO ASSIST THE APPLICANT IN SETTING ASIDE THE PROVISIONS OF THE CONSTITUTION UNDER WHICH THE APPLICANT

CAME INTO EXISTENCE AND ALSO TO REPUDIATE THE DECISION OF THE GENERAL PRESIDENT OF THE INTERNATIONAL UNION.

18. IN ALL THE CIRCUMSTANCES SET OUT ABOVE, WE ARE OF THE VIEW THAT, IN THE EXERCISE OF OUR DISCRETION, THE BOARD SHOULD NOT GIVE ITS CONSENT TO THE INSTITUTION OF A PROSECUTION AGAINST THE RESPONDENTS IN THIS CASE. THE APPLICATIONS ARE THEREFORE DISMISSED.

1928-72-U: DOVER CORPORATION (CANADA) LTD. TURNBULL ELEVATOR DIVISION
(APPLICANT) V. JOHN RICHARD BURFIELD, RICHARD HERBERT YAKELEY INTER-
NATIONAL UNION OF ELEVATOR CONSTRUCTORS, LOCAL 50 (RESPONDENTS).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS O. HODGES AND H. J. F. ADE.

APPEARANCES AT THE HEARING: D. CHURCHILL-SMITH, M. MITCHNICK AND R. SUDDARD FOR THE APPLICANT; A. E. GOLDEN, W. G. PUNNETT AND JAMES HUGHES FOR THE RESPONDENTS.

DECISION OF THE BOARD: MAY 11, 1972.

1. THIS IS AN APPLICATION FOR RELIEF UNDER SECTION 123 OF THE LABOUR RELATIONS ACT.

2. SECTION 123(1) OF THE ACT READS AS FOLLOWS:

"WHERE ON THE COMPLAINT OF AN INTERESTED PERSON, TRADE UNION, COUNCIL OF TRADE UNIONS OR EMPLOYERS' ORGANIZATION THE BOARD IS SATISFIED THAT A TRADE UNION OR COUNCIL OF TRADE UNIONS CALLED OR AUTHORIZED OR THREATENED TO CALL OR AUTHORIZE AN UNLAWFUL STRIKE OR THAT AN OFFICER, OFFICIAL OR AGENT OF A TRADE UNION OR COUNCIL OF TRADE UNIONS COUNSELLED OR PROCURED OR SUPPORTED OR ENCOURAGED AN UNLAWFUL STRIKE OR THREATENED AN UNLAWFUL STRIKE, OR THAT EMPLOYEES ENGAGED IN OR THREATENED TO ENGAGE IN AN UNLAWFUL STRIKE, IT MAY DIRECT WHAT ACTION IF ANY A PERSON, EMPLOYEE, EMPLOYER, EMPLOYERS' ORGANIZATION, TRADE UNION OR COUNCIL OF TRADE UNIONS AND THEIR OFFICERS, OFFICIALS OR AGENTS SHALL DO OR REFRAIN FROM DOING WITH RESPECT TO THE UNLAWFUL STRIKE OR THE THREAT OF AN UNLAWFUL STRIKE."

3. THE RESPONDENTS RAISED TWO PRELIMINARY OBJECTIONS. IN THE

FIRST OF THESE OBJECTIONS, THE RESPONDENTS ARGUED THAT SECTION 123 WAS NOT AVAILABLE TO AN EMPLOYER SINCE THAT TERM OR DESIGNATION IS NOT SET OUT IN THE OPENING WORDS OF THE SECTION WHICH PROVIDE THAT AN INTERESTED PERSON, TRADE UNION, COUNCIL OF TRADE UNIONS OR EMPLOYERS' ORGANIZATION ARE THE PROPER PARTIES AND THE ONLY PARTIES WHO MAY LAUNCH A COMPLAINT UNDER THE SECTION.

4. THE BOARD REJECTED THE FIRST OBJECTION. IT SEEMS ELEMENTARY THAT THE TERM "INTERESTED PERSON" IS WIDE ENOUGH TO AND OBVIOUSLY MUST INCLUDE THE EMPLOYER OF EMPLOYEES WHO MAY BE FOUND TO HAVE ENGAGED IN OR THREATENED AN UNLAWFUL STRIKE. IT IS INDEED DIFFICULT TO CONCEIVE OF ANY BODY WITH ANY HIGHER INTEREST THAN THAT OF THE EMPLOYER IN A SITUATION SUCH AS THAT WHICH IS CONTEMPLATED BY SECTION 123.

5. THE SECOND ARGUMENT WAS BASED ON THE PROVISIONS OF SECTION 96 OF THE BRITISH NORTH AMERICA ACT WHICH READS AS FOLLOWS:

"THE GOVERNOR GENERAL SHALL APPOINT THE JUDGES OF THE SUPERIOR, DISTRICT, AND COUNTY COURTS IN EACH PROVINCE, EXCEPT THOSE OF THE COURTS OF PROBATE IN NOVA SCOTIA AND NEW BRUNSWICK."

THE RESPONDENTS SUBMITTED THAT SECTION 123 OF THE ACT PURPORTED TO ENABLE THE ONTARIO LABOUR RELATIONS BOARD TO ISSUE INJUNCTIONS. IT WAS ARGUED THAT WHERE PROVINCIAL LEGISLATION ESTABLISHES TRIBUNALS WHICH ARE TO EXERCISE POWERS ANALOGOUS TO THE POWERS OF A JUDGE OF A SUPERIOR, DISTRICT OR COUNTY COURT, THE POWERS ARE ULTRAVIRES OF THE BOARD. IN SUPPORT OF ITS PROPOSITION, THE RESPONDENTS RELIED UPON LABOUR RELATIONS BOARD OF SASKATCHEWAN V. JOHN EAST IRON WORKS LTD. 1948 4 DLR 673.

6. THE APPLICANT ARGUED THAT CONSTITUTIONAL MATTERS OUGHT TO BE SETTLED BY THE COURTS AND THAT THE BOARD, IN THE ABSENCE OF CLEAR CUT AUTHORITY FROM THE COURTS, OUGHT TO FOLLOW THE PROVISIONS OF AND EXERCISE THE POWERS DELINEATED IN SECTION 123 UNTIL SUCH TIME AS THE COURTS MIGHT DECIDE THE ISSUE. THE APPLICANT ALSO RELIED UPON THE DECISION IN THE LABOUR RELATIONS BOARD OF SASKATCHEWAN CASE (SUPRA).

7. AT THE HEARING, AFTER DUE CONSIDERATION OF THE SUBMISSIONS OF THE PARTIES, THE BOARD DECIDED THAT THE PROPER COURSE FOR IT TO FOLLOW WAS TO ASSERT JURISDICTION IN ACCORDANCE WITH THE PROVISIONS OF SECTION 123. IN DOING SO, THE BOARD CONSIDERED THAT THE SECTION IS A NEW SECTION THE VALIDITY OF WHICH HAS NOT BEEN BROUGHT IN TO QUESTION BEFORE THE COURTS. IN THE ABSENCE OF ANY DECISION BY THE COURTS TO THE CONTRARY, THE BOARD FELT THAT IT WAS THE OBLIGATION OF THE BOARD TO EXERCISE THE POWERS CONFERRED UPON IT UNDER THE

PROVISIONS OF SECTION 123 OF THE LABOUR RELATIONS ACT AND PROCEEDED TO HEAR THE MATTER.

8. THE APPLICANT AND THE RESPONDENT, INTERNATIONAL UNION OF ELEVATOR CONSTRUCTORS, LOCAL 50 WERE PARTIES TO A COLLECTIVE AGREEMENT WHICH RAN FROM 1ST OF MAY, 1967 TO THE 30TH OF APRIL, 1972. NEGOTIATIONS FOR ITS AMENDMENT OR RENEWAL ARE PRESENTLY IN PROGRESS. THE AGREEMENT CONTAINED AN ARTICLE SETTING OUT THE WORK JURISDICTION OF THE RESPONDENT UNION.

9. ON APRIL 27, 1972, CHARLES HAWLEY, GENERAL SUPERINTENDENT FOR THE APPLICANT, ATTENDED AT THE BUILDING SITE IN BARRIE WHERE JOHN RICHARD BURFIELD AND RICHARD HERBERT YAKELEY WERE EMPLOYED BY THE APPLICANT IN THE INSTALLATION OF ELEVATORS IN A BUILDING OWNED BY ONE W. W. WIGGINS AT 90 AND 98 HOLGATE AVENUE IN BARRIE. THERE ARE TWO BUILDINGS ON THE SITE AND ON THE 27TH OF APRIL THE WORK ON ONE OF THE BUILDINGS WAS AT A STAGE WHICH REQUIRED THE INSTALLATION OF MACHINE BEAMS WHICH ARE USED FOR THE SUPPORT OF THE MACHINERY BY WHICH THE ELEVATORS ARE OPERATED.

10. HAWLEY ENTERED INTO A DISCUSSION WITH BURFIELD WITH RESPECT TO THE INSTALLATION OF THE BEAMS AND WAS TOLD BY THE LATTER THAT HE MIGHT AS WELL LAY IT ON THE LINE, THAT HE WOULD BE UNABLE TO INSTALL THE BEAMS WITHOUT RECEIVING THE AUTHORIZATION OF THE UNION. HE ADVISED HAWLEY THAT IF HE WERE TO INSTALL THE BEAMS WITHOUT THE PRIOR AUTHORIZATION OF THE UNION, HE WOULD BE LIKELY TO LOSE HIS UNION CARD. YAKELEY TOOK THE SAME POSITION AS BURFIELD WITH RESPECT TO THE NEED FOR UNION AUTHORIZATION BEFORE HE COULD WORK ON THE BEAMS. HAWLEY THEREUPON ANNOUNCED THAT THE JOB WOULD HAVE TO BE CLOSED DOWN. BOTH MEN EXPRESSED THEIR WILLINGNESS TO RETURN TO THE SITE AND TO PERFORM ANY WORK AVAILABLE THERE OTHER THAN THE DISPUTED WORK.

11. THIS SITUATION AROSE BECAUSE OF THE USE BY THE APPLICANT OF WHAT MAY BE TERMED, FOR THE SAKE OF CONVENIENCE, "PREFABRICATED" MACHINE BEAMS IN THE CONSTRUCTION OF ELEVATORS ON THE BUILDING SITE IN BARRIE. THESE MACHINE BEAMS HAD BEEN PARTIALLY MACHINED AND HAD HAD CERTAIN ATTACHMENTS PLACED UPON THEM AT THE FACTORY. THE RESPONDENTS CONTEND THAT THIS MACHINING AND ATTACHMENT OF PARTS FALLS WITHIN THE EXCLUSIVE JURISDICTION OF THE RESPONDENT UNION AS SET OUT IN THE COLLECTIVE AGREEMENT AND THAT THE USE OF THE PREFABRICATED BEAMS BY THE RESPONDENTS IS A VIOLATION OF THE WORK JURISDICTION CLAUSE OF THE COLLECTIVE AGREEMENT.

12. IN OUR OPINION, THERE CAN BE NO DOUBT THAT THE CONDUCT OF BURFIELD AND YAKELEY CONSIDERED, FOR THE MOMENT, APART FROM THE COLLECTIVE AGREEMENT, CONSTITUTED A STRIKE WITHIN THE MEANING OF

SECTION 1(1)(N) OF THE LABOUR RELATIONS ACT. THE FACT THAT THERE WAS OTHER WORK TO BE DONE UPON THE SITE WHICH THEY WERE ABLE AND WILLING TO PERFORM, BUT WHICH WAS NOT ASSIGNED TO THEM BY BURFIELD, DOES NOT BRING THEIR REFUSAL TO INSTALL THE MACHINE BEAMS OUTSIDE THE AMBIT OF THE DEFINITION. THE REFUSAL OF THE TWO EMPLOYEES TO INSTALL THE BEAMS WITHOUT UNION AUTHORIZATION AMOUNTS, IN THE LANGUAGE OF SEC. 1(1)(N) TO A CONCERTED ACTIVITY IN THEIR PART DESIGNED TO RESTRICT OR LIMIT OUTPUT. THE SELECTION OF THE WORK TO BE DONE WAS NOT THE PREROGATIVE OF THE EMPLOYEES.

13. IT WAS CONTENDED BY COUNSEL FOR THE RESPONDENTS THAT BECAUSE, IN THEIR OPINION, THE ACTION OF THE COMPANY IN ATTEMPTING TO HAVE PREFABRICATED BEAMS INSTALLED AMOUNTED TO A BREACH OF THE COLLECTIVE AGREEMENT, THE RESPONDENTS WERE ENTITLED TO REFUSE TO INSTALL THEM. WITH RESPECT TO THIS, WE ARE OF THE OPINION THAT THE QUESTION AS TO WHETHER THE EMPLOYER BREACHED THE COLLECTIVE AGREEMENT IN BRINGING PREFABRICATED BEAMS TO THE JOB SITE FOR INSTALLATION IS ONE TO BE DECIDED UNDER THE TERMS OF THE COLLECTIVE AGREEMENT. WE MAKE NO FINDING UPON THAT ISSUE.

14. ASSUMING, HOWEVER, THAT THE EMPLOYER DID BREACH THE COLLECTIVE AGREEMENT AS THE RESPONDENTS ALLEGE, DOES THAT ENTITLE THE RESPONDENTS TO REFUSE TO INSTALL THE BEAMS, A FUNCTION WHICH NORMALLY FALLS WITHIN THE JURISDICTION OF AND ASSIGNMENTS TO THE MEMBERS OF THE RESPONDENT UNION? IT WAS NOT ARGUED THAT SUCH A REFUSAL WAS SPECIFICALLY AUTHORIZED UNDER THE TERMS OF THE COLLECTIVE AGREEMENT. AS WE UNDERSTAND THE ARGUMENT OF THE RESPONDENTS, THE CLAIM WAS THAT THE ALLEGED RIGHT TO REFUSE TO INSTALL THE BEAMS ARISED FROM THE FACT, AS ALLEGED BY THE RESPONDENTS, THAT THE BEAMS HAD BEEN BUILT IN BREACH OF THE AGREEMENT. THE ARGUMENT THEREFORE APPEARS TO BE BASED UPON THE PROVISIONS OF ARTICLE XIV OF THE COLLECTIVE AGREEMENT WHICH STATES IN PAR. 1 AS FOLLOWS:

"IT IS AGREED BY BOTH PARTIES TO THIS AGREEMENT THAT SO LONG AS THE PROVISIONS HEREIN CONTAINED ARE CONFORMED TO, NO STRIKES OR LOCKOUTS SHALL BE ORDERED AGAINST EITHER PARTY."

15. SECTION 36 OF THE LABOUR RELATIONS ACT, HOWEVER, PROVIDES THAT:

- (1) EVERY COLLECTIVE AGREEMENT SHALL PROVIDE THAT THERE WILL BE NO STRIKES OR LOCK-OUTS SO LONG AS THE AGREEMENT CONTINUES TO OPERATE.
- (2) IF A COLLECTIVE AGREEMENT DOES NOT CONTAIN SUCH A PROVISION AS IS MENTIONED IN SUBSECTION

1, IT SHALL BE DEEMED TO CONTAIN THE FOLLOWING PROVISION"

"THERE SHALL BE NO STRIKES OR LOCK-OUTS SO LONG AS THE AGREEMENT CONTINUES TO OPERATE."

IN OUR OPINION, THE CLAUSE OF THE COLLECTIVE AGREEMENT REPRESENTS AN ATTEMPT BY THE PARTIES TO CONTRACT THEMSELVES OUT FROM UNDER THE PROVISIONS OF THE ACT. IN THE PIGOTT CONSTRUCTION COMPANY LIMITED CASE, OLRB MONTHLY REPORT, JUNE 1969, P. 399, AND THE BELMONT PLASTERING COMPANY LIMITED CASE, OLRB MONTHLY REPORT, MARCH 1970, P. 1459, THE BOARD DECLARED THAT PARTIES CANNOT CONTRACT THEMSELVES OUT FROM UNDER THE ACT AS THE PARTIES HAVE ATTEMPTED TO DO IN THIS CASE.

16. IF THE RESPONDENTS ARE RELYING UPON THAT CLAUSE TO JUSTIFY THE STOPPAGE, THEIR RELIANCE IS OBVIOUSLY MISPLACED IN VIEW OF THE PROVISIONS OF SECTION 36 OF THE ACT.

17. SECTION 63 OF THE ACT PROHIBITS STRIKES AND LOCKOUTS WHERE A COLLECTIVE AGREEMENT IS IN OPERATION OR WHERE ONE IS NOT OPERATION, UNTIL THE LAPSE OF STATED PERIODS OF TIME FOLLOWING THE APPOINTMENT OF A CONCILIATION OFFICER OR MEDIATOR AND THE HAPPENING OF CERTAIN SUBSEQUENT EVENTS SET OUT IN THE SECTION. NO CONCILIATION OFFICER HAS BEEN APPOINTED IN THIS MATTER. THE STRIKE ENGAGED IN BY THE RESPONDENTS BURFIELD AND YAKELEY IS THEREFORE CONTRARY TO THE PROVISIONS OF THE LABOUR RELATIONS ACT.

18. IT WAS SUBMITTED BY THE RESPONDENTS THAT IN THE CIRCUMSTANCES OF THIS CASE THE BOARD IN THE EXERCISE OF ITS DISCRETION SHOULD DECLINE TO ISSUE AN ORDER.

19. THERE IS NO DOUBT THAT THE ISSUE WITH RESPECT TO THE USE OF PREFABRICATED BEAMS HAD PREVIOUSLY ARISEN BETWEEN THE PARTIES AND HAD BEEN ADJUDICATED UPON BY TRIBUNALS OUTSIDE THE PROVINCE OF ONTARIO WITH, HOWEVER, ALTERNATE SUCCESS FOR THE APPLICANT AND THE UNION IN DIFFERING LEGAL JURISDICTIONS.

20. THAT THERE WOULD BE A CONFRONTATION WITH REGARD TO THE WORK AT BARRIE MUST HAVE BEEN VERY OBVIOUS TO ALL CONCERNED AS SOON AS THE TYPE OF INSTALLATION BECAME KNOWN. THE EVIDENCE MAKES IT CLEAR THAT HAWLEY ANTICIPATED THAT THE MEN WORKING AT BARRIE MIGHT REFUSE TO DO THE WORK WHEN HE CAME TO DISCUSS THE MATTER ON THE SITE. IT, INDEED, WOULD APPEAR FROM THE GENERAL HISTORY OF THE ISSUE AS IT EMERGED IN THE EVIDENCE THAT THE DIE MAY WELL HAVE BEEN CAST BEFORE HAWLEY WENT TO BARRIE. IT CANNOT BE DENIED, HOWEVER, THAT HE WAS ENTITLED TO HOPE THAT IN THIS INSTANCE AS IN SOME OTHERS, THE ASSIGNMENT MIGHT

HAVE BEEN ACCEPTED. HE WENT TO TEST THAT POSSIBILITY DESPITE WHAT TURNED OUT TO BE WELL FOUNDED ANTICIPATION AS TO THE RESULT.

21. THE EVIDENCE DISCLOSES THAT THE COLLECTIVE AGREEMENT PROVIDES FOR A JOINT INDUSTRY COMMITTEE COMPRISED OF MANAGEMENT AND LABOUR MEMBERS. THE COMMITTEE HAS POWER TO RESOLVE ALL QUESTIONS AND DISPUTES ARISING UNDER THE WORK JURISDICTION CLAUSE. THE PRESENT ISSUE HAS APPARENTLY BEEN BEFORE THIS COMMITTEE BUT IT HAS BEEN UNABLE TO RESOLVE THE DISPUTE.

22. THE AGREEMENT ALSO PROVIDES FOR ARBITRATION. THE ISSUE HAS BEEN ADJUDICATED UPON IN TWO ARBITRATION PROCEEDINGS IN DIFFERENT JURISDICTIONS WITH DIVIDED SUCCESS. AN ATTEMPT TO HAVE THE PRESENT DISPUTE GO TO ARBITRATION WAS MADE BY THE APPLICANT ALBEIT, SOMEWHAT BELATEDLY. THE UNION, HOWEVER, WHEN ASKED IF IT WOULD ABIDE BY THE DECISION OF AN ARBITRATION BOARD, STATED THAT IT WOULD, PROVIDED IT CONSIDERED THE AWARD TO BE FAIR. THIS WOULD APPEAR TO BE A RESERVATION OF RECOURSE TO CONFRONTATION IN THE EVENT OF AN ADVERSE FINDING.

23. IN VIEW OF ALL OF THE FOREGOING AND HAVING IN MIND THE OVERALL INTENT OF THE LEGISLATION TO PROHIBIT WORK STOPPAGES THROUGH STRIKES AND LOCKOUTS, THE BOARD DOES NOT CONSIDER THE PRESENT SITUATION TO BE ONE IN WHICH IT SHOULD DECLINE TO ISSUE AN ORDER.

24. IT SHOULD BE NOTED THAT MR. JAMES HUGHES, THE BUSINESS MANAGER OF INTERNATIONAL UNION OF ELEVATOR CONSTRUCTORS, LOCAL 50, CONFIRMED THAT BURFIELD AND YAKELEY HAD BEEN ADVISED NOT TO PERFORM THE DISPUTED WORK UNTIL AUTHORIZED TO DO SO.

25. IN THE RESULT THEN, THE BOARD DIRECTS THAT:

THE RESPONDENTS JOHN RICHARD BURFIELD AND RICHARD HERBERT YAKELEY DO FORTHWITH PROCEED TO INSTALL THE MACHINE BEAMS IN QUESTION HEREIN AS REQUIRED BY THE APPLICANT AT THE BUILDING SITE AT 90 AND 98 HOLGATE AVENUE, BARRIE, ONTARIO.

26. THE BOARD FURTHER DIRECTS THAT:

THE RESPONDENT INTERNATIONAL UNION OF ELEVATOR CONSTRUCTORS, LOCAL 50 DO CEASE AND DESIST FROM INTERFERING IN ANY WAY WITH THE INSTALLATION BY BURFIELD AND YAKELEY OF THE MACHINE BEAMS IN QUESTION AS REQUIRED BY THE APPLICANT AND DIRECTED BY THIS BOARD AT THE BUILDING SITE AT 90 AND 98 HOLGATE AVENUE, BARRIE, ONTARIO.

1592-71-U: LONDON AND DISTRICT BUILDING SERVICE WORKERS' UNION, LOCAL 220, S.E.I.U., A.F. OF L., C.I.O., C.L.C. (COMPLAINANT) V. EXTENDICARE (CANADA) LTD. (RESPONDENT).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS J. D. BELL AND O. HODGES.

APPEARANCES AT THE HEARING: TED WOHL AND CHARLES DAVIDSON FOR THE COMPLAINANT; JOHN GRANT, GLEN LOGAN, TIM D. HAMMILL AND JAMES E. ADAMSO FOR THE RESPONDENT.

DECISION OF THE BOARD: MAY 11, 1972.

1. THE NAME "EXTENDICARE (CANADA) LIMITED" APPEARING IN THE STYLE OF CAUSE OF THIS COMPLAINT AS THE NAME OF THE RESPONDENT IS AMENDED TO READ: "EXTENDICARE (CANADA) LTD."

2. THIS IS A COMPLAINT UNDER SECTION 79 OF THE LABOUR RELATIONS ACT IN WHICH THE COMPLAINANT ALLEGES THAT WILLIAM GARDIN GARDINER HAS BEEN DEALT WITH BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF SECTION 58(A) OF THE ACT. THE COMPLAINANT REQUESTS THAT THE GRIEVOR BE IMMEDIATELY REINSTATED WITH COMPENSATION FOR LOST WAGES AND BENEFITS.

3. ON NOVEMBER 15, 1971, GARDINER WAS HIRED BY THE RESPONDENT ON A PART TIME BASIS AS A CLEANER. IT IS QUITE CLEAR THAT AT THE TIME OF HIS HIRING HE WAS TOLD BY MR. GLEN LOGAN, A SUPERVISOR, THAT HE WAS BEING HIRED ON A THREE MONTH TRIAL BASIS. ON NOVEMBER 29, 1971, GARDINER BECAME A FULL TIME EMPLOYEE BECAUSE IT WAS FELT, ACCORDING TO THE EVIDENCE OF THE RESPONDENT, THAT IN VIEW OF THE INCREASE IN THE NUMBER OF RESIDENTS, A FULL TIME CLEANER AND JANITOR WAS REQUIRED.

4. MR. GARDINER WAS INTERVIEWED AT HIS HIRING BY LOGAN, WHO INDICATED TO HIM THAT HIS STARTING RATE WOULD BE \$1.65 AN HOUR. IT IS OF SOME SIGNIFICANCE TO NOTE THAT LOGAN WENT ON TO EXPLAIN TO GARDINER THAT THE UNION WAS COMING IN TO REPRESENT EMPLOYEES OF THE RESPONDENT AND THAT THIS WOULD, NO DOUBT, RESULT IN AN INCREASE IN HIS WAGES.

5. THE UNION WAS CERTIFIED ON THE 21ST OF DECEMBER, 1971 AND NOTICE TO BARGAIN WAS GIVEN TO THE RESPONDENT. ON JANUARY 14, 1972, GARDINER'S RATE WAS INCREASED TO \$2.00 AN HOUR. THIS IS, HOWEVER, NOT ATTRIBUTABLE TO THE ADVENT OF THE UNION. GARDINER WAS DISCHARGED BY THE RESPONDENT ON FEBRUARY 10, 1972. THE TOTAL PERIOD OF EMPLOYMENT WAS THUS UNDER THREE MONTHS.

6. THE COMPLAINANT ALLEGES THAT THE DISCHARGE WAS BECAUSE OF GARDINER'S ACTIVITIES AS CHAIRMAN OF THE UNION'S NEGOTIATING COMMITTEE.

THE RESPONDENT'S POSITION IS THAT GARDINER'S WORK PERFORMANCE DETERIORATED AND BECAME SO UNSATISFACTORY THAT IT BECAME NECESSARY TO TERMINATE HIS EMPLOYMENT. HIS PARTICIPATION IN UNION MATTERS WAS NOT A CONSIDERATION THAT ENTERED INTO THE DISCHARGE ACCORDING TO THE RESPONDENT'S WITNESSES.

7. IT WAS GARDINER'S TESTIMONY THAT HIS WORK, WHICH INVOLVED VACUUMING THE LOBBIES AND CORRIDORS ON THE FIRST FLOOR OF THE RESPONDENT'S BUILDING, CLEANING THE KITCHEN FLOOR AND DUSTING THE DINING-ROOM FLOORS AND CLEANING HALLWAYS AND ROOMS IN THE SECOND FLOOR, WAS PERFORMED AT ALL TIMES TO THE SATISFACTION OF THE RESPONDENT. HE SAID THAT HE HAD BEEN COMPLIMENTED ON THE MANNER IN WHICH HE LOOKED AFTER THE DUTIES BY SEVERAL MANAGEMENT PEOPLE.

8. ON FEBRUARY 3, 1972, GARDINER ATTENDED A CLEANING DEMONSTRATION HELD AT THE EXTENDICARE PREMISES IN SCARBOROUGH, ONTARIO. HE WAS DIRECTED BY THE RESPONDENT TO GO TO THIS DEMONSTRATION. HE ACCOMPANIED A MISS YOUNG, WHO WAS THE ASSISTANT TO THE ADMINISTRATOR. THE DEMONSTRATION WAS PUT ON BY THE FULLER BRUSH COMPANY FOR THE PURPOSES OF INSTRUCTING THE CLEANING STAFF OF EXTENDICARE IN THE CLEANING AND STRIPPING OF FLOORS. IT WAS ARGUED ON GARDINER'S BEHALF THAT HIS ASSIGNMENT, TOGETHER WITH THE WAGE INCREASE, MUST BE TAKEN TO INDICATE MANAGEMENT'S APPROVAL OF HIS WORK UP TO THAT TIME.

9. GARDINER TESTIFIED THAT ON FEBRUARY 7, 1972, HE ARRIVED AT WORK AT ABOUT QUARTER TO SEVEN. HE WENT TO THE KITCHEN AND FOUND THAT IT HAD NOT BEEN CLEANED OVER THE WEEK-END. HE SAID THAT HE HAD SUGGESTED TO THE CHEF HE WOULD DO THE KITCHEN FLOOR, AND THE LATTER HAD EXPRESSED THE WISH THAT HE DO SO. GARDINER THEN PROCEEDED TO MOP THE KITCHEN AND DUST THE DINING-ROOM FLOOR. WHEN HE HAD FINISHED THESE TASKS, HE WENT TO DO THE LOBBY. IN THE LOBBY, HE WAS MET BY LOGAN WHO ADVISED HIM THAT JOHN GRANT, THE RESPONDENT'S ADMINISTRATOR, WAS ANNOYED BECAUSE THE LOBBY HAD NOT BEEN VACUUMED. LOGAN HAD OBTAINED THE VACUUM CLEANER AND PROCEEDED TO CLEAN THE LOBBY AND DIRECTED GARDINER TO GO ON WITH HIS OTHER WORK. HE SAID THAT HE EXPLAINED TO LOGAN THAT HE HAD NOT DONE THE LOBBY FIRST THAT MORNING BECAUSE IT LOOKED FAIRLY CLEAN TO HIM WHEREAS THE KITCHEN WAS DIRTY. LATER ON THAT DAY, GARDINER AGAIN CLEANED THE KITCHEN AND THE DINING-ROOM.

10. GARDINER TESTIFIED THAT NOBODY FROM MANAGEMENT SPOKE TO HIM ABOUT HIS WORK ON THE 8TH OR 9TH OF FEBRUARY AND THAT ON THE 10TH OF FEBRUARY, WHILE HE WAS WORKING ON THE SECOND FLOOR, HE RECEIVED A MESSAGE THAT HE WAS WANTED DOWNSTAIRS. HE WAS DIRECTED TO GO TO GRANT'S OFFICE. HIS EVIDENCE IS THAT GRANT REMINDED HIM THAT HE WAS ON A THREE MONTH TRIAL. GARDINER STATED THAT HE WAS AWARE OF THIS. GRANT THEN TOLD HIM THAT HE HAD NOT WORKED OUT AS THE RESPONDENT HAD FIGURED HE WOULD AND THAT HE WOULD BE FINISHED ON FRIDAY, 11TH OF FEBRUARY.

11. THE EVIDENCE GIVEN ON BEHALF OF THE RESPONDENT WAS TO THE EFFECT THAT AT THE COMMENCEMENT OF HIS EMPLOYMENT AND FOR SOME TIME AFTERWARDS, GARDINER HAD PERFORMED IN A SATISFACTORY MANNER. HE WAS GIVEN AN INCREASE FROM HIS STARTING RATE TO \$2.00 PER HOUR ON THE BASIS OF LOGAN'S REQUEST FOLLOWING GARDINER'S APPEAL TO HIM FOR AN INCREASE. THE FEELING AT THAT TIME, ACCORDING TO THE RESPONDENT'S WITNESSES, WAS THAT GARDINER WAS BEING ASKED TO DO PART OF LOGAN'S JOB, WHILE THE LATTER WAS ABSENT DUE TO ILLNESS, AND IT WAS FELT HE WOULD DO A BETTER JOB IF HE RECEIVED THE HIGHER RATE. THE REQUEST FOR AN INCREASE HAD BEEN MADE DURING GARDINER'S FIRST MONTH OF EMPLOYMENT BUT DID NOT COME THROUGH UNTIL JANUARY BECAUSE OF A TIME LAY IN THE PAY ARRANGEMENTS.

12. THE ADMINISTRATOR'S EVIDENCE WAS THAT HE SENT GARDINER TO THE TRAINING SESSION REFERRED TO ABOVE BECAUSE LOGAN, WHOM HE WOULD HAVE PREFERRED TO HAVE SENT, WAS ILL, AND BECAUSE HE WANTED A DRIVER FOR MISS YOUNG DUE TO THE BAD WEATHER. GARDINER DID IN FACT DRIVE MISS YOUNG'S CAR BECAUSE OF THE POOR ROAD CONDITIONS.

13. ACCORDING TO THE RESPONDENT'S EVIDENCE, GARDINER'S WORK HABITS BEGAN TO DETERIORATE FROM ABOUT THE TIME HE WAS GIVEN THE INCREASE UNTIL THE DATE OF HIS DISCHARGE. THE COMPLAINT WAS NOT WITH RESPECT TO THE QUALITY OF GARDINER'S WORK, WHICH THE RESPONDENT FOUND TO BE SATISFACTORY, BUT RATHER WITH RESPECT TO HIS PERSISTENT FAILURE TO FOLLOW LOGAN'S INSTRUCTIONS AS TO THE PRIORITY OF JOBS AND HIS LACK OF ABILITY TO ESTABLISH AND FOLLOW A SYSTEM OR ROUTINE. AS AN EXAMPLE OF THIS, LOGAN STATED HE HAD INSTRUCTED GARDINER TO COME IN AT 7:00 A.M. ONE MORNING HE CAME IN AT 4:00 A.M. TO DO THE KITCHEN FLOOR BECAUSE HE HAD NOT DONE IT THE PREVIOUS DAY. IT WAS ALSO SAID BY THE RESPONDENT THAT GARDINER SPENT TOO MUCH TIME CLEANING ROOMS THAT WERE SUPPOSED TO BE DONE BY WOMEN HIRED FOR THAT PURPOSE SO THAT HIS PROPER TASKS WERE NOT BEING COMPLETED ON TIME.

14. LOGAN TESTIFIED THAT ON WEDNESDAY, FEBRUARY 9TH, HE TOLD GARDINER TO MAKE SURE THE KITCHEN AND DINING-ROOM WERE CLEANED. HE STATED THAT LOGAN LEFT THAT DAY WITHOUT DOING EITHER OF THESE ROOMS. ON THURSDAY, FEBRUARY 10TH, ACCORDING TO LOGAN, HE WAS CALLED INTO GRANT'S OFFICE AND ASKED TO EXPLAIN WHY THE LOBBY HAD NOT BEEN VACUUMED. IT WAS APPARENT THAT THE LOBBY, SINCE IT WAS OPEN TO VISITORS, WAS THE NUMBER ONE PRIORITY INSOFAR AS CLEANING WAS CONCERNED. GARDINER ACKNOWLEDGED THAT WHAT HE TERMED THE "GENERAL ROUTINE" WAS TO FIRST VACUUM THE LOBBY, THE CORRIDORS AND THE LOUNGE ON THE FIRST FLOOR. HE STATED THAT GARDINER TOLD HIM THAT HE HAD NOT HAD TIME TO DO THE KITCHEN THE PREVIOUS DAY AND THAT THAT WAS WHY HE WAS DOING IT FIRST RATHER THAN THE LOBBY.

15. GRANT AND LOGAN STATED THAT THEY DISCUSSED GARDINER'S WORK PERFORMANCE AND, ACCORDING TO THEIR EVIDENCE, DECIDED THAT GARDINER WAS NOT WORKING OUT SATISFACTORILY. IT IS OF SOME INTEREST TO NOTE THAT GRANT'S EVIDENCE WAS THAT LOGAN HAD ORIGINALLY RECOMMENDED GARDINER FOR THE JOB, BUT THAT IT WAS LARGELY UPON THE BASIS OF LOGAN'S DISSATISFACTION WITH GARDINER'S PERFORMANCE THAT THE DECISION TO DISCHARGE THE LATTER APPEARS TO HAVE BEEN BASED.

16. THERE IS A CONFLICT OF EVIDENCE WITH RESPECT TO THE DATE UPON WHICH THE INCIDENT WITH RESPECT TO THE CLEANING OF THE DINING-ROOM AND KITCHEN OCCURRED. THERE IS LITTLE DOUBT UPON THE EVIDENCE, HOWEVER, THAT AN INCIDENT DID OCCUR IN WHICH GARDINER ELECTED TO CLEAN THE KITCHEN AND DINING-ROOM PRIOR TO CLEANING THE LOBBY, CONTRARY TO THE PRIORITIES DETERMINED BY LOGAN AND THE ADMINISTRATOR. THERE IS ALSO LITTLE DOUBT THAT THE RESPONDENT RELIED ON THIS INCIDENT AS A CULMINATING POINT IN WHAT THEY VIEWED AS A GRADUAL IN GARDINER'S PERFORMANCE.

17. THERE IS NO EVIDENCE SUGGESTING ANY GENERAL ANTI-UNION BIAS ON THE PART OF THE RESPONDENT. THE EVIDENCE OF GARDINER, OF THE COMPLAINANT'S BUSINESS AGENT CHARLES DAVIDSON AND OF MISS GEMUS, A MEMBER OF THE BARGAINING COMMITTEE, WAS FRANK AND CLEAR THAT THERE HAD BEEN NO INTERFERENCE BY THE RESPONDENT WITH THEM OR, TO THEIR KNOWLEDGE, WITH ANY OTHER EMPLOYEE WITH RESPECT TO UNION MEMBERSHIP OR ACTIVITY. IT IS QUITE CLEAR THAT LOGAN WAS IN SYMPATHY WITH THE UNION MOVEMENT. HE HAD, IN FACT, SOUGHT TO BE A MEMBER OF THE COMPLAINANT UNION AND ASPIRED TO BECOME CHAIRMAN OF THE BARGAINING COMMITTEE BEFORE IT WAS DECIDED THAT HE WAS INELIGIBLE BECAUSE OF HIS POSITION AS SUPERVISOR. HE WAS FULLY AWARE OF GARDINER'S MEMBERSHIP IN THE UNION AND OF HIS ELECTION TO THE CHAIRMANSHIP OF THE BARGAINING COMMITTEE SOMETIME IN THE MIDDLE OF JANUARY, ALMOST A MONTH BEFORE THE DISCHARGE. MR. DAVIDSON STATED THAT HE OBTAINED LEAVE OF ABSENCE FROM THE RESPONDENT FOR GARDINER SO THAT HE COULD ATTEND NEGOTIATIONS. THIS WAS IMMEDIATELY GRANTED WITH PAY. GENERAL NEGOTIATIONS ARE CARRIED ON BETWEEN EXTENDICARE AND THE COMPLAINANT UNION COVERING ALL EXTENDICARE ESTABLISHMENTS WHOSE EMPLOYEES ARE REPRESENTED BY THE COMPLAINANT UNION.

18. HAVING REGARD TO ALL OF THE EVIDENCE, WE FIND THAT THE COMPLAINANT HAS NOT ESTABLISHED THAT THE RESPONDENT DEALT WITH WILLIAM GARDINER CONTRARY TO THE PROVISIONS OF THE LABOUR RELATIONS ACT.

19. THE COMPLAINT IS THEREFORE DISMISSED.

1861-72-U: ASSOCIATED FREEZERS OF CANADA LIMITED (APPLICANT) V. WAREHOUSEMEN AND MISCELLANEOUS DRIVERS LOCAL 419, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (RESPONDENT).

- AND -

1862-72-U: ASSOCIATED FREEZERS OF CANADA LIMITED (APPLICANT) V. GUY BERNIER, RONALD KOWK, AL MORRIS, STANLEY PERRY, CLIFFORD STACEY AND RALPH STRINGER (RESPONDENTS).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS O. HODGES AND W. H. WIGHTMAN.

APPEARANCES AT THE HEARING: R. A. WERRY, R. H. TOMILSON AND S. C. BERNARDO FOR THE APPLICANT, ROBIN B. CUMINE AND AL LEFORT FOR THE RESPONDENTS.

DECISION OF J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBER W. H. WIGHTMAN:
MAY 11, 1972.

1. AT THE HEARING THE BOARD DIRECTED THAT THESE MATTERS BE TRIED TOGETHER.

2. THE APPLICANT HAS APPLIED UNDER SECTION 82 OF THE LABOUR RELATIONS ACT FOR A DECLARATION THAT THE RESPONDENT UNION HAS CONTRAVENED SECTION 65 OF THE LABOUR RELATIONS ACT IN THAT THE RESPONDENT UNION CALLED OR AUTHORIZED AN UNLAWFUL STRIKE AND THAT THE INDIVIDUAL RESPONDENTS HAVE CONTRAVENED SECTION 63(1) OF THE ACT IN THAT THEY ENGAGED IN AN UNLAWFUL STRIKE AGAINST THE APPLICANT.

3. IT WAS AGREED THAT THE APPLICANT AND THE RESPONDENT UNION ARE PARTIES TO A COLLECTIVE AGREEMENT THAT REMAINS IN EFFECT UNTIL JUNE 30, 1973 AND THAT THE INDIVIDUAL RESPONDENTS WERE EMPLOYEES OF THE APPLICANT COVERED BY THE PROVISIONS OF THE COLLECTIVE AGREEMENT AT ALL RELEVANT TIMES.

4. THE APPLICANT OPERATES A COLD STORAGE WAREHOUSE. THIRTY PER CENT OF THE APPLICANT'S BUSINESS CONSISTS OF STORAGE OF GOODS MANUFACTURED BY YORK FARMS. ON MARCH 16, 1972 THE EMPLOYEES OF YORK FARMS WHO ARE REPRESENTED BY CANADIAN FOOD AND ALLIED WORKERS LOCAL 114 COMMENCED A LAWFUL STRIKE AGAINST YORK FARMS. ON MARCH 20, 1972 LOCAL 114 ESTABLISHED AN "INFORMATIONAL PICKET LINE" AT THE APPLICANT'S PREMISES AND THIS PICKET LINE CONTINUED FROM DAY TO DAY UP TO THE HEARING IN THIS MATTER.

5. ON APRIL 13, 1972 THE SECRETARY-TREASURER OF THE RESPONDENT UNION, LOCAL 419, ADVISED THE APPLICANT THAT HE INTENDED TO INSTRUCT THE APPLICANT'S EMPLOYEES WHO WERE MEMBERS OF LOCAL 419 NOT TO HANDLE

ANY OF YORK FARMS PRODUCTS WHICH WERE STORED IN THE APPLICANT'S WAREHOUSE. THE SECRETARY-TREASURER OF LOCAL 419 ISSUED THE INSTRUCTIONS TO THE EMPLOYEES AND THE INDIVIDUAL RESPONDENTS REFUSED TO HANDLE ANY OF YORK FARMS PRODUCTS IN THE WAREHOUSE FROM AND AFTER APRIL 14, 1972. HOWEVER, THE INDIVIDUAL RESPONDENTS CONTINUED TO CROSS THE PICKET LINE THAT HAD BEEN ESTABLISHED BY LOCAL 114 AND HANDLED GOODS STORED FOR CUSTOMERS OF THE APPLICANT OTHER THAN YORK FARMS.

6. IT WAS THE RESPONDENTS' POSITION THAT THE RESPONDENTS WERE ENTITLED TO TAKE THE ACTION DESCRIBED ABOVE IN VIEW OF THE PROVISIONS OF ARTICLE 6.02 OF THE COLLECTIVE AGREEMENT. ARTICLE 6 READS AS FOLLOWS:

ARTICLE 6 - STRIKES AND LOCKOUTS

6.01 DURING THE TERM OF THIS AGREEMENT, THE UNION AGREES THAT THERE WILL BE NO STRIKE AND THE COMPANY AGREES THAT THERE WILL BE NO LOCKOUT.

6.02 IT SHALL NOT BE A VIOLATION OF THIS AGREEMENT, HOWEVER, FOR THE EMPLOYEES COVERED HEREUNDER TO REFUSE TO CROSS A LEGAL PICKET LINE AND PERFORM WORK IN ANY INSTANCE WHERE THE PICKET LINE HAS BEEN AUTHORIZED BY THE UNION PICKETING. HOWEVER, IT IS UNDERSTOOD THAT NO SUCH AUTHORIZATION WILL BE HONoured WHERE THE RESULT WOULD BE TO INTERFERE WITH THE ACCESS, OR EXIT OF THE COMPANY OR ITS TENANTS AS A WHOLE, WHEN A STRIKE IS IN EFFECT AFFECTING A PART; SAVE AND EXCEPT WHERE THAT PART SHALL BE WITHIN THE LOCAL UNION OF THE FIRST PART.

7. IT WAS ARGUED ON BEHALF OF THE RESPONDENTS THAT THE PARTIES TO A COLLECTIVE AGREEMENT ARE ENTITLED TO MAKE PROVISIONS IN THE COLLECTIVE AGREEMENT AS TO WHAT WORK EMPLOYEES CAN OR MUST DO. IT WAS THEREFORE ARGUED THAT THE PARTIES IN THE INSTANT CASE HAVE AGREED THAT THE EMPLOYEES COVERED BY THE COLLECTIVE AGREEMENT NEED NOT HANDLE "HOT CARGO". IN SUPPORT OF THEIR ARGUMENT THE RESPONDENTS RELIED ON THE DECISION OF THE BOARD IN THE JOHN INGLIS Co. LIMITED CASE, 53 CLLC ¶17,049, WHEREIN THE BOARD RULED THAT A CONCERTED REFUSAL BY EMPLOYEES TO WORK OVERTIME DID NOT CONSTITUTE AN UNLAWFUL STRIKE SINCE THE COLLECTIVE AGREEMENT PROVIDED THAT OVERTIME WORK WAS AN OPTIONAL MATTER LEFT TO THE DISCRETION OF THE EMPLOYEES.

8. IF WE WERE TO CONSIDER THIS APPLICATION WITHOUT REFERENCE TO ARTICLE 6.02 OF THE COLLECTIVE AGREEMENT, IT IS QUITE APPARENT THAT LOCAL 419, THROUGH ITS SECRETARY-TREASURER, CALLED OR AUTHORIZED A STRIKE WHICH WAS ENGAGED IN BY THE INDIVIDUAL RESPONDENTS SINCE THE REFUSAL BY THE INDIVIDUAL RESPONDENTS TO HANDLE YORK FARMS PRODUCTS CONSTITUTED A "CONCERTED ACTIVITY ON THE PART OF EMPLOYEES DESIGNED TO RESTRICT OR LIMIT OUTPUT" WITHIN THE MEANING OF SECTION 1(1)(M) OF THE ACT. EVEN THOUGH THE EMPLOYEES ENGAGED THEMSELVES IN OTHER WORK ON A FULL-TIME BASIS, THEIR REFUSAL TO HANDLE YORK FARMS PRODUCTS AS DIRECTED BY THE APPLICANT WOULD NECESSARILY RESTRICT OR LIMIT THE TYPE OF OUTPUT IF NOT THE QUANTITY. SINCE THIS ACTIVITY TOOK PLACE DURING THE TERM OF OPERATION OF A COLLECTIVE AGREEMENT, THE STRIKE ENGAGED IN WOULD BE AN UNLAWFUL STRIKE PURSUANT TO THE PROVISIONS OF SECTION 63(1) OF THE ACT.

9. WE MUST ACCORDINGLY DETERMINE WHAT EFFECT, IF ANY, ARTICLE 6.02 HAS ON THIS APPLICATION.

10. IT MUST BE REMEMBERED THAT THE APPLICANT HAS APPLIED FOR A DECLARATION THAT THE STRIKE IS UNLAWFUL, I.E. CONTRARY TO THE LABOUR RELATIONS ACT. SECTION 36 OF THE ACT READS:

36(1) EVERY COLLECTIVE AGREEMENT SHALL PROVIDE THAT THERE WILL BE NO STRIKES OR LOCK-OUTS SO LONG AS THE AGREEMENT CONTINUES TO OPERATE.

(2) IF A COLLECTIVE AGREEMENT DOES NOT CONTAIN SUCH A PROVISION AS IS MENTIONED IN SUBSECTION 1, IT SHALL BE DEEMED TO CONTAIN THE FOLLOWING PROVISION:

"THERE SHALL BE NO STRIKES OR LOCK-OUTS SO LONG AS THIS AGREEMENT CONTINUES TO OPERATE."

SECTION 36 THEREFORE MAKES IT MANDATORY THAT A COLLECTIVE AGREEMENT PROVIDE THAT THERE SHALL BE NO STRIKES OR LOCK-OUTS SO LONG AS A COLLECTIVE AGREEMENT CONTINUES TO OPERATE. IT APPEARS THAT THE PARTIES TO THE COLLECTIVE AGREEMENT IN THE INSTANT CASE HAVE ATTEMPTED TO QUALIFY THE "NO STRIKE" PROVISION CONTAINED IN THE COLLECTIVE AGREEMENT WHICH IS REQUIRED BY SECTION 36 OF THE ACT. BY SO DOING THE PARTIES HAVE ATTEMPTED TO CONTRACT THEMSELVES OUT FROM UNDER THE EXPRESS PROVISIONS OF SECTION 36 OF THE ACT. IN THE PIGOTT CONSTRUCTION COMPANY LIMITED CASE, OLRB MONTHLY REPORT, JUNE 1969, P. 399, AND THE BELMONT PLASTERING COMPANY LIMITED CASE, OLRB MONTHLY REPORT, MARCH 1970, P. 1459, THE BOARD DECLARED THAT PARTIES CANNOT CONTRACT THEMSELVES OUT FROM UNDER THE ACT AS THE PARTIES HAVE ATTEMPTED TO DO IN THIS CASE. THE ATTEMPT OF THE PARTIES TO QUALIFY THE "NO STRIKE"

PROVISION IS READILY DISTINGUISHABLE FROM THE PROBLEM CONCERNING THE OVERTIME PROVISION WHICH WAS THE BASIS OF THE DISPUTE IN THE JOHN INGLIS Co. Limited Case. IN THE LATTER CASE THE EMPLOYEES DID NOT ATTEMPT TO LIMIT OR RESTRICT OUTPUT BY REFUSING TO PERFORM CERTAIN WORK DURING THEIR NORMAL WORKING HOURS AS DID THE EMPLOYEES IN THE INSTANT CASE.

11. HOWEVER, EVEN IF THE PARTIES COULD CONTRACT THEMSELVES OUT FROM UNDER THE ACT, ON THE FACTS SET OUT ABOVE, IT WOULD APPEAR THAT ARTICLE 6.02 DOES NOT AUTHORIZE THE ACTIVITY ENGAGED IN BY THE EMPLOYEES. EVEN ASSUMING THAT THE PICKET LINE ESTABLISHED BY LOCAL 114 WAS LEGAL, THE APPLICANT'S EMPLOYEES IN THIS MATTER CLEARLY DID NOT "REFUSE TO CROSS THE PICKET LINE" WHICH REFUSAL ARTICLE 6.02 WOULD APPEAR TO AUTHORIZE. ON THE CONTRARY, THE EMPLOYEES CROSSED THE PICKET LINE AND WENT TO WORK. HOWEVER, AT WORK THEY CHOSE TO SELECT THE GOODS THAT THEY WOULD HANDLE AND ELECTED NOT TO HANDLE YORK FARMS PRODUCTS. TO GIVE ARTICLE 6.02 THE MEANING THE RESPONDENTS URGED ON THE BOARD, WE WOULD HAVE TO SUBSTITUTE THE WORD "OR" FOR THE CONJUNCTIVE WORD "AND" SO THAT ARTICLE 6.02 WOULD READ "... REFUSE TO CROSS A LEGAL PICKET LINE OR PERFORM WORK ...". SINCE THE WORD OR DOES NOT APPEAR IN THAT SENTENCE OF ARTICLE 6.02, THE PARTIES WOULD APPEAR TO HAVE INTENDED THAT THE EMPLOYEES WOULD NOT BE REQUIRED TO CROSS A LEGAL PICKET LINE IN ORDER TO PERFORM WORK IN THE CIRCUMSTANCES THEREIN DESCRIBED.

12. HOWEVER THAT MIGHT BE, THERE IS A REAL QUESTION CONCERNING THE LEGALITY OF THE INFORMATIONAL PICKET LINE ESTABLISHED BY LOCAL 114 SINCE THAT PICKET LINE WOULD APPEAR TO BE "SECONDARY PICKETING" OF THE KIND THAT HAS BEEN DECLARED UNLAWFUL BY THE COURTS. IN THIS REGARD, STARK J. IN THE TORONTO HARBOUR COMMISSIONERS V. SNINSKY ET AL. CASE, 58 CLLC ¶14,065, STATED AS FOLLOWS:

THERE IS NO LABOUR DISPUTE IN EXISTENCE BETWEEN THE TORONTO HARBOUR COMMISSIONERS AND ITS OWN EMPLOYEES. THIS IS OF COURSE A FORM OF SECONDARY PICKETING AND IN VIEW OF THE DECISIONS IN HERSEES OF WOODSTOCK LIMITED VS. GOLDSTEIN ET AL. [1963] 2 O.R. 81 AND OF HEATHER HILL APPLIANCES LIMITED ET AL. VS. MCCORMACK ET AL. [1966] 1 O.R. PAGE 12, IT MUST NOW BE TAKEN TO BE THE LAW OF ONTARIO THAT PICKETING, HOWEVER PEACEFUL, OF THE PREMISES OF AN EMPLOYER, WHERE THERE IS NO DIRECT DISPUTE BETWEEN HIM AND THE PICKETERS OR BETWEEN HIM AND HIS EMPLOYEES, IS PER SE UNLAWFUL AND CANNOT BE JUSTIFIED MERELY BECAUSE THE PICKETERS ARE ENGAGED IN A LEGAL STRIKE AGAINST ANOTHER EMPLOYER WHO HAS BUSINESS RELATIONS WITH THE EMPLOYER BEING PICKETED.

13. SINCE THE FACTS OF THE TORONTO HARBOUR COMMISSIONERS CASE APPEAR TO BE ON ALL FOURS WITH THE FACTS OF THE INSTANT CASE, THERE WOULD APPEAR TO BE NO REASON FOR THIS BOARD TO ARRIVE AT A DIFFERENT CONCLUSION THAT MR. JUSTICE STARK.

14. FOR THE ABOVE REASONS, WE THEREFORE FIND THAT WHILE THE PROVISIONS OF ARTICLE 6.02 OF THE COLLECTIVE AGREEMENT MIGHT LIMIT THE LIABILITY OF THE RESPONDENTS UNDER THE COLLECTIVE AGREEMENT, THOSE PROVISIONS CANNOT ABRIDGE THE PROVISIONS OF THE LABOUR RELATIONS ACT. WE THEREFORE DECLARE PURSUANT TO THE PROVISIONS OF SECTION 82 OF THE ACT THAT WAREHOUSEMEN AND MISCELLANEOUS DRIVERS LOCAL 419, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA CALLED OR AUTHORIZED AN UNLAWFUL STRIKE OF CERTAIN OF THE APPLICANT'S EMPLOYEES WHICH COMMENCED ON APRIL 14, 1972.

15. WE FURTHER DECLARE THAT GUY BERNIER, RONALD KOWK, AL MORRIS, STANLEY PERRY, CLIFFORD STACEY AND RALPH STRINGER ENGAGED IN AN UNLAWFUL STRIKE AGAINST THE APPLICANT ON AND AFTER APRIL 14, 1972.

DECISION OF BOARD MEMBER O. HODGES: MAY 11, 1972.

I DISSENT.

MY VIEW IS THAT THE RESPONDENT UNION IS ACTING IN ACCORD WITH WHAT BOTH PARTIES TO THE COLLECTIVE AGREEMENT UNDERSTOOD, NEGOTIATED AND AGREED UPON WHEN THE AGREEMENT WAS SIGNED. THE APPLICANT COMPANY HAS SIMPLY FOUND A WAY AROUND THAT AGREEMENT BY THE EXPEDIENT MEANS OF AN APPLICATION TO THIS BOARD.

MY FINDING IS THAT THE EMPLOYEES ARE NOT ON STRIKE, AS ALLEGED, AND IT THEREFORE FOLLOWS THAT THE APPLICATION SHOULD BE DISMISSED.

WITH RESPECT TO THE PICKET LINE SET UP BY THE UNION STRIKING AGAINST YORK FARMS, I CONSIDER THAT PICKET LINE TO BE A DEMOCRATIC MEANS OF EXPRESSION AND FREE SPEECH AND THAT NEITHER THE INDIVIDUALS PICKETING NOR THE UNION, OF WHICH THE PICKETS ARE MEMBERS, ARE GUILTY OF A CRIMINAL OR UNLAWFUL ACT.

1525-71-U: THE CANADIAN UNION OF OPERATING ENGINEERS (COMPLAINANT)
v. 400 UNIVERSITY AVENUE PROSPECT COMPANY (RESPONDENT).

BEFORE: FRANK V. BOSCARIOL, VICE-CHAIRMAN, AND BOARD MEMBERS O. HODGES AND H. ADE.

APPEARANCES AT THE HEARING: HUGH C. McLACHLAN AND V. McMANUS FOR THE COMPLAINANT; K. G. SCOTT AND EDWARD FOX FOR THE RESPONDENT.

DECISION OF FRANK V. BOSCARIOL AND H. ADE: MAY 12, 1972.

1. THIS IS A COMPLAINT FILED UNDER THE PROVISIONS OF SECTION 79 OF THE LABOUR RELATIONS ACT, WHEREIN THE COMPLAINANT ALLEGES THAT ON OR ABOUT JANUARY 21, 1972, THE AGGRIEVED PERSON, MANUEL NUNES, WAS DEALT WITH BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF SECTION 58(A) OF THE SAID ACT.

2. THE COMPLAINANT HEREIN WAS CERTIFIED BY THIS BOARD ON JANUARY 28, 1972 TO REPRESENT CERTAIN EMPLOYEES OF THE RESPONDENT, FOLLOWING A HEARING IN THIS REGARD ON DECEMBER 21, 1971. THE APPLICATION WAS FILED ON DECEMBER 7, 1971 AND BEARS A TERMINAL DATE OF DECEMBER 16, 1971. (SEE BOARD FILE NO. 1355-71-R).

3. THE EVIDENCE OF VICTOR McMANUS, A BUSINESS MANAGER OF THE COMPLAINANT REVEALS THAT EARLY IN NOVEMBER OF 1971, MANUEL NUNES UPON SIGNING A MEMBERSHIP CARD, PLAYED A VITAL ROLE IN OBTAINING THE SIGNATURE OF MOST OF THE EMPLOYEES DURING THE ORGANIZATIONAL CAMPAIGN. HE FURTHER TESTIFIED THAT DURING THIS PERIOD HE ADVISED WILLIAM McLACHLAN, THE BUILDING SUPERINTENDENT, THAT NUNES WOULD BE PUT ON THE BARGAINING COMMITTEE ONCE CERTIFICATION WAS OBTAINED. THIS TESTIMONY IS IN DIRECT CONFLICT WITH THAT OF McLACHLAN'S EVIDENCE WHO CATEGORICALLY DENIES THAT HE WAS SO INFORMED AT ANY TIME BY McMANUS.

4. AT THE INITIAL HEARING OF THIS MATTER ON MARCH 20, 1972, MANUEL NUNES TESTIFIED THAT HE WAS HIRED BY THE RESPONDENT IN MAY OR JUNE OF 1971 AND WORKED FIRSTLY AS A SECURITY GUARD AND THEN AS A CLEANER UP UNTIL SOMETIME IN NOVEMBER OF 1971, WHEN HE WAS APPOINTED BY McLAUGHLIN TO THE POSITION OF ASSISTANT FOREMAN. THE EVIDENCE OF McLAUGHLIN IN THIS RESPECT IS THAT NUNES, WHO SPEAKS PORTUGUESE, REMAINED AS A CLEANER THROUGHOUT THE RELEVANT TIMES, BUT IN ADDITION WAS ASKED TO ASSIST THE FOREMAN IN COMMUNICATING WITH THE PORTUGUESE STAFF.

5. THE AGGRIEVED PERSON FURTHER STATED THAT SOMETIME DURING THE LATTER PART OF NOVEMBER AND EARLY DECEMBER, 1971, UPON BEING APPROACHED BY McMANUS, HE SIGNED A MEMBERSHIP CARD IN THE COMPLAINANT UNION AND AGREED TO ASSIST IN ITS ORGANIZATIONAL CAMPAIGN IN SIGNING UP THE OTHER EMPLOYEES. UPON RECEIVING THE NECESSARY INSTRUCTIONS FROM McMANUS IN THIS REGARD, THE WITNESS STATED THAT HE WAS SUCCESSFUL IN OBTAINING THE SIGNATURES OF THE MAJORITY OF THE EMPLOYEES INVOLVED.

6. NUNES FURTHER TESTIFIED THAT ON JANUARY 12, 1972, McLAUGHLIN

ADVISED HIM THAT IT WAS BROUGHT TO HIS ATTENTION THAT HE (NUNES) "HAD BROUGHT THE UNION INTO THE BUILDING AND GAVE CARDS TO THE PEOPLE TO SIGN." IN THIS REGARD, THE WITNESS STATED THAT McLAUGHLIN INDICATED THAT THE MATTER WOULD BE REPORTED TO THE OWNERS AT THE HEAD OFFICE TO THE EFFECT THAT, IN THE WORDS OF THE WITNESS, "I HAD BROUGHT THE UNION IN AND PRETTY SOON I WOULD BE IN TROUBLE." THE WITNESS FURTHER STATED THAT HE HAD ANOTHER CONVERSATION WITH McLAUGHLIN THE NEXT DAY, WHEREIN HE GAVE LATTER A DOCTOR'S CERTIFICATE DATED JANUARY 13, 1972, (EXHIBIT #1), WHICH INDICATED THAT THE WITNESS WAS "UNABLE TO WORK FOR THE TIME BEING." THE WITNESS STATED THAT HE REMAINED AWAY FROM WORK UNTIL JANUARY 21, 1972. UPON HIS RETURN TO WORK ON THIS DATE, HE WAS ADVISED BY McLAUGHLIN IN HIS OFFICE THAT "HE HAD BAD NEWS FOR ME." THE WITNESS FURTHER STATED THAT "HE (McLAUGHLIN) TOLD ME YOU ARE LAID OFF BECAUSE YOU KNOW WHAT YOU DID. YOU BROUGHT THE UNION IN." THE WITNESS STATED THAT HE KNEW IMMEDIATELY WHAT McLAUGHLIN WAS REFERRING TO WHEN HE INDICATED THAT "I HAD ADVISED YOU BEFORE." THIS IN THE WITNESS'S OPINION, WAS A REFERENCE TO THE PREVIOUS CONVERSATION THAT HAD TRANSPIRED BETWEEN THEM ON JANUARY 12, 1972. UPON CROSS-EXAMINATION, THE WITNESS DID CONCEDE THAT THE DOCTOR'S CERTIFICATE WAS ALSO DISCUSSED ON JANUARY 21, 1972. IN THIS REGARD, THE WITNESS STATED THAT McLAUGHLIN QUESTIONED THE FACT THAT NO DEFINITE TIMES FOR TREATMENT WERE SET OUT IN THE CERTIFICATE AND REFUSED TO PUT HIM BACK TO WORK AT THIS TIME. THE WITNESS WAS ALSO INFORMED AT THIS TIME THAT ANOTHER EMPLOYEE WAS TO START ON HIS JOB ON THE FOLLOWING MONDAY. THE WITNESS DID AGREE WITH COUNSEL FOR THE RESPONDENT THAT McLAUGHLIN, NEVERTHELESS TOLD THE WITNESS THAT HE WOULD BE PLACED AT THE TOP OF THE WAITING LIST FOR PURPOSES OF RECALL.

7. NUNES FURTHER TESTIFIED THAT PRIOR TO THE MEETING WITH McLAUGHLIN ON JANUARY 21, 1972, HE HAD ASKED THAT ANOTHER EMPLOYEE, HILDEBERTO FURTADO, TO STAND JUST OUTSIDE OF THE DOOR TO McLAUGHLIN'S OFFICE WITHIN HEARING DISTANCE OF THE CONVERSATION WHICH WAS TO TRANSPIRE FURTADO'S EVIDENCE IN THIS REGARD IS TO THE EFFECT THAT NUNES HAD PHONED HIM EARLIER THAT DAY AND THAT FURTADO HAD AGREED TO COMPLY WITH HIS REQUEST TO WITNESS THE CONVERSATION. UPON REPORTING IN AT 4:50 P.M., HE STATIONED HIMSELF BESIDE THE OPEN DOOR AND HEARD McLAUGHLIN STATE TO NUNES THAT "I HAVE SOME BAD NEWS FOR YOU." FURTADO FURTHER TESTIFIED THAT McLAUGHLIN THEN SAID THAT HE HAD RECEIVED A PHONE CALL FROM Mr. FOX (THE BUILDING SUPERVISOR) WHO INFORMED HIM THAT NUNES SHOULDN'T WORK ANY MORE BECAUSE HE BROUGHT THE UNION INTO THE BUILDING. HOWEVER, HAVING REGARD TO ALL OF THE CIRCUMSTANCES, AND HAVING CAREFULLY ASSESSED THE Demeanour OF FURTADO AND THE MANNER IN WHICH HE TESTIFIED BEFORE US, AND IT IS NOT WITHOUT INTEREST THAT WE NOTE HIS TESTIMONY IN THIS REGARD REQUIRED THE ASSISTANCE OF AN INTERPRETER, WE ARE NOT PREPARED TO REGARD SUCH TESTIMONY AS CORROBORATIVE OF THE EVIDENCE ADDUCED BY NUNES.

8. AT THE SUBSEQUENT HEARING OF THIS MATTER ON APRIL 25, 1972, McLAUGHLIN, IN DEFENCE, TESTIFIED THAT THE FIRST TIME HE BECAME AWARE OF NUNE'S POSITION ON THE NEGOTIATING COMMITTEE WAS ON FEBRUARY 17, 1972. HE ALSO INDICATED THAT UPON PROMOTING NUNES TO THE CLEANER CLASSIFICATION IN NOVEMBER 1971, THERE WAS NO INCREASE IN HIS RATE OF \$2.30 PER HOURS.

9. THE EVIDENCE IN DEFENCE FURTHER DISCLOSED THAT MRS. DERDA, A CLEANER EMPLOYED BY THE RESPONDENT ON THE 5 P.M. TO MIDNIGHT SHIFT, ATTENDED AT McLAUGHLIN'S OFFICE ON THE MORNING OF JANUARY 11, 1972 WITH HER CHILD AND APPEARED IN A VERY EMOTIONAL STATE. SHE REPORTED AT THIS TIME THAT NUNES HAD APPROACHED HER ON THE PREVIOUS FRIDAY EVENING AND TOLD HER THAT IF SHE REFUSED "TO MAKE SIGNATURE FOR THE UNION THERE WILL BE NO MORE JOB FOR YOU." UPON REPORTING THIS INCIDENT, (THERE WERE ALSO THREE PREVIOUS OCCASSIONS UPON WHICH SHE HAS BEEN APPROACHED BY NUNES IN THIS FASHION) TO McLAUGHLIN, THE LATTER ARRANGED FOR A FACE-TO-FACE CONFRONTATION BETWEEN THE TWO OF THEM AT 4:45 P.M. THE SAME DAY. McLAUGHLIN'S TESTIMONY INDICATED THAT HE HAD PREVIOUSLY RECEIVED OTHER COMPLAINTS BY THE FEMALE STAFF CONCERNING NUNE'S ACTIVITIES IN THIS REGARD. WHEN MRS. DERDA REPEATED HER COMPLAINT TO NUNES, THE LATTER ADMITTED TO THESE ACTIONS WHEREUPON McLAUGHLIN WARNED HIM TO CEASE SUCH INTIMIDATING ACTIVITIES. IN HIS OWN WORDS, McLAUGHLIN FURTHER TOLD NUNES THAT "IF ANY SIMILAR CIRCUMSTANCES AROSE, YOU WILL BE SUBJECT TO DISMISSAL." THIS EVIDENCE IS IN SHARP CONTRAST TO THAT PRESENTED TO US BY NUNES HIMSELF, WHO CLAIMED THAT HE MADE NO APPROACH TOWARDS EMPLOYEES REGARDING THE UNION WHILE ON COMPANY TIME.

10. AS REGARDS THE DOCTOR'S CERTIFICATE REFERRED TO IN PARAGRAPH #6 HEREIN, McLAUGHLIN CLAIMED THAT HE DISMISSED IT WITH NUNES ON THE MORNING OF JANUARY 14, 1972. IN THIS REGARD, WE NOTE THAT DESPITE THE WORDING OF THE LETTER, NUNES NEVERTHELESS WORKED HIS SHIFT AT THIS TIME. McLAUGHLIN STATED THAT NUNES DID NOT REPORT FOR WORK THEREAFTER UNTIL JANUARY 21, 1972. McLAUGHLIN FURTHER TESTIFIED THAT NUNES CAME INTO HIS OFFICE AT 4:15 P.M. ON THIS DATE. IN McLAUGHLIN'S WORDS, "I TOLD HIM (NUNES) THAT I HADN'T HEARD FROM YOU. YOUR DOCTOR'S SLIP SAYS THAT YOU ARE OFF WORK INDEFINITELY. YOU DIDN'T CALL AND I WAS SHORT-STAFFED. I HAD TO REPLACE YOU, BUT I WILL PUT ON TOP OF THE WAITING LIST. YOU CAN COME BACK TO WORK WHEN THERE IS AN OPENING BUT YOU MUST HAVE A CLEAN BILL OF HEALTH FROM THE DOCTOR."

11. McLAUGHLIN INDICATED THAT THIS CONVERSATION LASTED APPROXIMATELY FIVE MINUTES AND THAT AT NO TIME DID HE OBSERVE FURTADO IN THE AREA. IN THIS REGARD, THE WITNESS STATED THAT A CHECK OF FURTADO'S TIME CARD REVEALED THAT HE PUNCHED IN AT 4:35 OR 4:36 ON THE AFTERNOON OF JANUARY 21, 1972.

12. HAVING CAREFULLY ASSESSED ALL OF THE EVIDENCE IN THESE PROCEEDINGS REGARDING INCIDENTS OCCURRING UP TO AND INCLUDING JANUARY 21, 1972, WE ARE SATISFIED THAT THE STATUS OF THE AGGRIEVED PERSON AT THIS TIME WAS THAT OF AN EMPLOYEE ON LAY OFF BY REASON OF ALLEGED MEDICAL PROBLEMS.

13. FURTHER, HAVING CAREFULLY ASSESSED THE CREDIBILITY OF ALL THE WITNESSES IN THESE PROCEEDINGS, THE MANNER IN WHICH THEY TESTIFIED AND THEIR DEMEANOUR IN THE WITNESS BOX, WE PREFER THE EVIDENCE OF THE RESPONDENT'S WITNESSES TO THOSE OF THE COMPLAINANT WHEREVER THEY CONFLICT.

14. HAVING REGARD TO THE ABOVE CIRCUMSTANCES, WE ARE SATISFIED ON THE BALANCE OF PROBABILITIES THAT THE COMPLAINANT HAS FAILED TO SATISFY THE ONUS ON IT OF ESTABLISHING THAT THE RESPONDENT'S ACTIONS IN RELATION TO MANUEL NUNES ON OR ABOUT JANUARY 21, 1972, WERE CONTRARY TO THE PROVISIONS OF SECTION 58(A) OF THE LABOUR RELATIONS ACT. IN VIEW OF THIS FINDING IT WILL NOT BE NECESSARY TO DEAL SPECIFICALLY WITH THE REMAINING EVIDENCE TENDERED IN THESE PROCEEDINGS SURROUNDING NUNES' SUBSEQUENT RE-EMPLOYMENT ON FEBRUARY 11, 1972. EVEN IF SUCH EVIDENCE WERE DEEMED RELEVANT TO THIS COMPLAINT, (AND WE MAKE NO SUCH FINDINGS IN THIS REGARD) WE ARE NEVERTHELESS SATISFIED THAT IN THESE PARTICULAR CIRCUMSTANCES, THE AGGRIEVED PERSON, MANUEL NUNES WAS NOT IN ANY EVENT, DEALT WITH BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF THE LABOUR RELATIONS ACT.

15. THE COMPLAINT IN THIS MATTER IS THEREFORE DISMISSED.

DECISION OF O. HODGES:

MAY 12, 1972.

THE EVIDENCE SURROUNDING THE RE-EMPLOYMENT OF NUNES ON FEBRUARY 11 IS RELEVANT TO THE QUESTION OF THE ALLEGED VIOLATION OF S. 58(2) OF THE ACT, IN MY OPINION. CONSIDERING THE PARTICULAR CIRCUMSTANCES AND ALL OF THE EVIDENCE IN THIS CASE, AND THE DECISION OF ANOTHER PANEL OF THE BOARD IN THE MATTER OF HILDEBERTO FURTADO, BOARD FILE NO. 1622-71-U, 18TH APRIL, 1972, J. D. O'SHEA, Q.C. CHAIRMAN, WHICH ALSO INVOLVED MR. NUNES, AND IN PARTICULAR THE DISSENT OF BOARD MEMBER DAVID B. ARCHER, IN THAT CASE, I WOULD EXPECT THE COMPANY TO RE-EMPLOY NUNES. FAILING SUCH RE-EMPLOYMENT, THE COMPLAINANT UNION MAY CONSIDER THE ADVISABILITY OF A SECOND APPLICATION BASED ON THE FACTS OF THE FEBRUARY 11 CIRCUMSTANCES AFFECTING MR. NUNES.

1714-71-M: THE COUNCIL OF PRINTING INDUSTRIES OF CANADA, (REPRESENTING THE ATTACHED LIST OF EMPLOYER) (EMPLOYER) V. TORONTO PHOTO-ENGRAVERS UNION LOCAL NO. 35-P, LPIU AND LOCAL 242, HAMILTON, LPIU (TRADE UNION).

BEFORE: FRANK V. BOSCARIOL, VICE-CHAIRMAN, AND THE BOARD MEMBERS J. D. BELL AND P. J. O'KEEFFE.

APPEARANCES AT THE HEARING: M. LEVINSON, L. YOUNG AND HENRY ASHWORTH FOR THE TRADE UNION; J. C. MURRAY AND E. C. CALDWELL FOR THE EMPLOYER.

DECISION OF VICE-CHAIRMAN FRANK V. BOSCARIOL AND BOARD MEMBER P. J. O'KEEFFE:
MAY 12, 1972.

1. THE MINISTER OF LABOUR HAS REFERRED TO THE BOARD, PURSUANT TO THE PROVISIONS OF SECTION 96 OF THE LABOUR RELATIONS ACT, THE QUESTION AS TO WHETHER HE HAS THE AUTHORITY UNDER THE ACT TO APPOINT A CONCILIATION OFFICER IN THE CIRCUMSTANCES AS SET OUT BELOW.

2. THE FACTS IN THIS REGARD AND WHICH ARE NOT IN DISPUTE, ARE AS FOLLOWS: A COLLECTIVE AGREEMENT (EXHIBIT #1) WAS ENTERED INTO BETWEEN THE COUNCIL OF PRINTING INDUSTRIES OF CANADA (HEREINAFTER REFERRED TO AS CPI) AND TORONTO PHOTO-ENGRAVERS UNION, LOCAL 35-P, L.P.I.U. AND LOCAL 242 HAMILTON, L.P.I.U. (HEREINAFTER RESPECTIVELY REFERRED TO AS THE TORONTO LOCAL AND THE HAMILTON LOCAL). THIS SINGLE AND COMMON AGREEMENT, WHICH WAS MADE EFFECTIVE FROM NOVEMBER 1, 1967 TO DECEMBER 31, 1969, REPRESENTED THE FIRST INSTANCE IN WHICH CPI ACTING ON BEHALF OF CERTAIN NAMED EMPLOYER MEMBERS, NEGOTIATED WITH BOTH THE TORONTO LOCAL AND THE HAMILTON LOCAL AS A SINGLE TRADE UNION PARTY, AS REGARDS THE WAGES AND WORKING CONDITIONS OF THEIR RESPECTIVE EMPLOYEES IN TORONTO AND HAMILTON.

3. BY MEMORANDUM OF AGREEMENT EFFECTIVE JUNE 1, 1972, (EXHIBIT #2), THE ORIGINAL COLLECTIVE AGREEMENT WAS AMENDED AND ITS TERMS WAS EXTENDED TO DECEMBER 31, 1971. THE TRADE UNION SIGNATORIES TO THIS AGREEMENT ARE LESLIE YOUNG, SECRETARY TREASURER OF THE TORONTO LOCAL AND HENRY ASHWORTH, PRESIDENT OF THE HAMILTON LOCAL.

4. PURSUANT TO SECTION 45(1) OF THE ACT, TIMELY NOTICE FOR THE RENEWAL OF THIS AGREEMENT WAS GIVEN TO CPI BY LETTER DATED OCTOBER 14, 1971 AND BEARS THE RESPECTIVE SIGNATURES OF THE ABOVE-NAMED LOCAL UNION OFFICERS. THE RELEVANT PORTION OF THIS LETTER READS AS FOLLOWS:

"THIS IS TO ADVISE THAT TORONTO PHOTO-ENGRAVERS UNION LOCAL 35-P, L.P.I.U. AND LOCAL 242, HAMILTON, L.P.I.U. DESIRE TO ENTER NEGOTIATIONS WITH THE COUNCIL OF PRINTING INDUSTRIES FOR THE RENEWAL OF OUR PRESENT COLLECTIVE AGREEMENT. WOULD YOU THEREFORE PLEASE ACCEPT THIS AS OFFICIAL NOTIFICATION OF OUR DESIRE TO PROPOSE AMENDMENTS TO THE AGREEMENT AND WE WOULD APPRECIATE A MEETING, FOR THE PURPOSE OF PRESENTING OUR PROPOSALS."

5. HOWEVER, BY LETTERS DATED NOVEMBER 29, 1971 (EXHIBITS #6A AND #6B), CPI NOTIFIED EACH OF THE ABOVE-NAMED OFFICERS AS FOLLOWS:

"THIS WILL ADVISE YOU THAT THE TORONTO AND HAMILTON COMMERCIAL PHOTOENGRAVING COMPANIES NOW PARTY TO CPI - TORONTO PHOTO-ENGRAVERS UNION, LOCAL 35P, L.P.I.U. AND LOCAL 242, HAMILTON, LPIU, COLLECTIVE AGREEMENT EFFECTIVE FROM JUNE 1, 1970 TO DECEMBER 31, 1971, HAVE ADVISED THIS OFFICE OF THEIR INTENTION TO NEGOTIATE INDEPENDENTLY WITH LOCALS 35P AND 242 LPIU RESPECTIVELY.

CPI WILL BE REPRESENTING THE TORONTO AND HAMILTON MEMBERS NOW SIGNATORY TO THE ABOVE CONTRACT IN ITS NEGOTIATIONS WITH EACH LOCAL.

SEPARATE DATES OF MEETINGS WILL THEREFORE BE REQUIRED."

6. BY LETTER DATED DECEMBER 9, 1971, MR. ASHWORTH INFORMED CPI AS FOLLOWS:

"YOUR LETTER DATED NOVEMBER 29TH, AT HAND AND NOTED.

THIS IS TO ADVISE THAT OUR MEMBERSHIP CONCERNED, WITH THE COMMERCIAL AGREEMENT, IS COMMITTED, AS IT HAS BEEN IN THE PAST, TO COMBINED NEGOTIATIONS.

WE, THEREFORE, CANNOT ACCEPT THE POSITION THAT THERE SHALL BE SEPARATE NEGOTIATIONS FOR THE HAMILTON COMPANIES."

7. IN RESPONSE TO CPI'S PROPOSAL FOR A DECEMBER 17 MEETING WITH ONLY THE TORONTO LOCAL (THE CORRESPONDENCE OF WHICH WAS NOT FILED WITH THE BOARD), MR. YOUNG, BY LETTER DATED DECEMBER 13, 1971 REPLIED AS FOLLOWS:

"THIS WILL ACKNOWLEDGE YOUR LETTER CONFIRMING A MEETING ON FRIDAY, DECEMBER 17TH IN THE C.P.I. BOARD ROOM.

THIS IS TO ADVISE THAT OUR COMMITTEE WILL BE IN ATTENDANCE TO NEGOTIATE AN AGREEMENT ON BEHALF OF OUR HAMILTON MEMBERS, AS WELL AS OUR TORONTO MEMBERS, AND WE WISH TO MAKE IT CLEAR THAT OUR ATTENDANCE AT THIS MEETING DOES NOT

INDICATE AGREEMENT WITH YOUR CORRESPONDENCE
DATED DECEMBER 3RD, 1971."

8. A COMBINED COMMITTEE OF REPRESENTATIVES OF BOTH THE TORONTO LOCAL AND HAMILTON LOCAL (WHICH INCLUDED MESSRS. YOUNG AND ASHWORTH) ATTENDED AT THE MEETING ON DECEMBER 17, 1971, WHEREIN CPI TOOK THE POSITION THAT IT WAS ONLY AUTHORIZED TO REPRESENT ITS TORONTO MEMBERS IN NEGOTIATIONS WITH A VIEW TOWARDS AN INDEPENDENT AGREEMENT WITH THE TORONTO LOCAL. THE MEETING TERMINATED WHEN THE COMMITTEE INDICATED ITS REFUSAL TO NEGOTIATE ON THIS BASIS.

9. ON JANUARY 17, 1972, MESSRS. YOUNG AND ASHWORTH JOINTLY EXECUTED A FORMAL REQUEST TO THE MINISTER FOR CONCILIATION SERVICES INDICATING THE TORONTO LOCAL AND HAMILTON LOCAL AS THE TRADE UNION PARTY TO THE PROCEEDINGS.

10. BY LETTER DATED JANUARY 24, 1972, CPI OBJECTED TO THE APPOINTMENT OF A CONCILIATION OFFICER IN THESE CIRCUMSTANCES ON THE BASIS, INTER ALIA, THAT ITS "AUTHORITY TO BARGAIN ON BEHALF OF ITS TORONTO AND HAMILTON MEMBERS RESPECTIVELY WAS CONDITIONAL UPON NEGOTIATIONS BEING CONDUCTED SEPARATELY."

11. AT THE HEARING OF THIS MATTER ON APRIL 11, 1972, COUNSEL FOR CPI SUBMITTED THAT, DESPITE THE PAST COLLECTIVE BARGAINING RELATIONSHIP WHICH ENCOMPASSED THE LARGE EMPLOYER UNIT, IN THE FACE OF SPECIFIC NOTICE (EXHIBITS #6A AND #6B), IT DOES NOT NOW LIE WITH THE RESPECTIVE LOCAL UNIONS TO, IN EFFECT, DETERMINE THE COMPOSITION OF THE EMPLOYER'S ASSOCIATION. COUNSEL FOR THE LOCAL UNIONS, ON THE OTHER HAND, MAINTAINS THAT CONCILIATION RIGHTS IN THIS REGARD FLOW FROM THE COLLECTIVE AGREEMENT (EXHIBIT #2) AND IT IS ONLY WITHIN THE FRAMEWORK OF THIS DOCUMENT THAT THE PROPER PARTIES TO THE CONCILIATION PROCEEDINGS CAN BE ASCERTAINED.

12. THE GOVERNING LEGISLATION IN THESE CIRCUMSTANCES APPEARS IN SECTION 15(1) OF THE ACT THE RELEVANT PORTION OF WHICH PROVIDES THAT:

"WHERE NOTICE HAS BEEN GIVEN UNDER SECTION45, THE MINISTER UPON THE REQUEST OF EITHER PARTY, SHALL APPOINT A CONCILIATION OFFICER TO CONFER WITH THE PARTIES AND ENDEAVOUR TO EFFECT A COLLECTIVE AGREEMENT".

THE QUESTION BEFORE THIS BOARD, THEREFORE, IS TO DETERMINE WHETHER OR NOT THE TORONTO LOCAL AND HAMILTON LOCAL QUALIFY AS A "PARTY" WITHIN THE MEANING OF THIS SUBSECTION, SO AS TO BE IN A POSITION TO INVOKE THE APPLICATION OF THIS MANDATORY PROVISION.

13. SECTION 45(1) OF THE ACT, IN TURN, PROVIDES THAT:

"EITHER PARTY TO A COLLECTIVE AGREEMENT MAY, WITHIN THE PERIOD OF NINETY DAYS BEFORE THE AGREEMENT CEASES TO OPERATE, GIVE NOTICE IN WRITING TO THE OTHER PARTY OF ITS DESIRE TO BARGAIN WITH A VIEW TO THE RENEWAL, WITH OR WITHOUT MODIFICATIONS, OF THE AGREEMENT THEN IN OPERATION OR TO THE MAKING OF A NEW AGREEMENT."

14. IT THEREFORE BECOMES APPARENT THAT THE REFERENCE TO "PARTY" IN SECTION 15(1) CAN ONLY BE APPLICABLE TO A "PARTY TO A COLLECTIVE AGREEMENT" THAT IS SEEKING THE RENEWAL OF THE DOCUMENT IN QUESTION, UPON PROPER NOTICE AS SET OUT IN SECTION 45(1). WE THEREFORE FIND THAT THE PROVISIONS OF THE COLLECTIVE AGREEMENT SUBJECT TO RENEWAL, VIZ. EXHIBIT #2, ARE RELEVANT TO THE ISSUE BEFORE THIS BOARD.

15. IN THIS REGARD, WE NOTE THE AMENDED VERSION OF THE EXPIRED ARTICLE 22 OF EXHIBIT #1 WHICH WAS INCORPORATED INTO EXHIBIT #2 AND WHICH PROVIDES:

"TERMINATION - CONTINUATION

SHOULD EITHER PARTY AT THE EXPIRATION OF THIS AGREEMENT DESIRE CHANGES OR ALTERATIONS THEREIN, A WRITTEN NOTICE TO THAT EFFECT SHALL BE SERVED UPON THE OTHER PARTY NOT LESS THAN THIRTY (30) DAYS PRIOR THERETO; OTHERWISE THIS AGREEMENT SHALL REMAIN IN EFFECT FROM YEAR TO YEAR, PROVIDED, HOWEVER, THE SAME MAY BE TERMINATED AT THE CLOSE OF ANY FOLLOWING YEAR UPON THIRTY (30) DAYS' NOTICE IN WRITING.

NOTICE OF AMENDMENT OR CANCELLATION

IT IS FURTHER PROVIDED THAT WHEN EITHER PARTY GIVES THE REQUIRED THIRTY (30) DAYS' NOTICE OF THEIR DESIRE TO RE-OPEN THIS AGREEMENT, THE PROPOSED CHANGES SHALL BE SUBMITTED IN WRITING TO THE OTHER PARTY NOT LESS THAN THREE (3) WEEKS PRIOR TO THE TERMINATION DATE OF DECEMBER 31ST, 1971, OR ANY SUBSEQUENT YEAR."

IT WOULD BE A TRITE TO FURTHER OBSERVE THAT PURSUANT TO ARTICLE 3 OF EXHIBIT #2, THIS COLLECTIVE AGREEMENT IS EXECUTED BETWEEN CPI AS THE EMPLOYER PARTY AND THE TORONTO LOCAL AND THE HAMILTON LOCAL AS THE "UNION". IN THIS REGARD, THE RECOGNITION CLAUSE, (ARTICLE 1.1 OF EXHIBIT #1) AS INCORPORATED INTO EXHIBIT #2, PROVIDES:

"THE UNION IS HEREBY RECOGNIZED BY THE EMPLOYER AS THE SOLE AND EXCLUSIVE BARGAINING AGENCY OF THE EMPLOYEES COVERED BY THIS CONTRACT FOR THE ENTIRE PERIOD OF THE AGREEMENT."

THIS PROVISION WOULD APPEAR TO CONFORM TO SECTION 35(1) OF THE ACT, WHICH STATES:

"EVERY COLLECTIVE AGREEMENT SHALL PROVIDE THAT THE TRADE UNION THAT IS PARTY THERETO IS RECOGNIZED AS THE EXCLUSIVE BARGAINING AGENT OF THE EMPLOYEES IN THE BARGAINING UNIT DEFINED THEREIN."

16. IN OUR OPINION, CPI HAS PURPORTED TO, IN EFFECT, UNILATERALLY AMEND A PROVISION OF THE COLLECTIVE AGREEMENT, VIZ. THE RECOGNITION CLAUSE, DURING THE PERIOD OF TIME THE TERMS OF WHICH ARE STILL IN EFFECT AND BINDING UPON THE PARTIES THERETO. IN THE ABSENCE OF CONSENT, THEREFORE, TO ACCEDE TO THE POSITION OF COUNSEL FOR CPI IN THESE CIRCUMSTANCES, WOULD BE TO UPSET THE STATUS QUO POSITION INHERENT IN THE PROVISIONS OF SECTION 70(1) OF THE ACT.

17. WE THEREFORE FIND THAT THE INSTRUCTIONS EMANATING FROM EACH OF THE TORONTO AND HAMILTON GROUPS OF MEMBER EMPLOYERS REQUESTING CPI TO REPRESENT THEM SEPARATELY IN COLLECTIVE BARGAINING AND WHICH WERE TRANSLATED IN THE FORM OF A DEMAND TO THE RESPECTIVE LOCAL UNIONS, ALTHOUGH ITSELF A PROPER SUBJECT FOR NEGOTIATIONS, CANNOT BE TREATED AS THE DETERMINANT OF THE PROPER PARTIES TO THE CONCILIATION PROCEEDINGS.

18. HAVING REGARD THEREFORE TO THE UNDISPUTED AUTHORITY OF CPI TO REPRESENT BOTH OF THE TORONTO AND HAMILTON GROUPS OF MEMBER EMPLOYERS AND TAKING INTO ACCOUNT ALL OF THE CIRCUMSTANCES HEREIN, WE FIND THAT THE TORONTO LOCAL AND HAMILTON LOCAL QUALIFY AS A "PARTY" PURSUANT TO THE TERMS OF SECTION 15(1) OF THE ACT.

19. HAVING REGARD TO ALL OF THE FOREGOING, OUR ANSWER TO THE QUESTION REFERRED TO THE BOARD BY THE MINISTER IS THAT THE MINISTER HAS THE AUTHORITY UNDER THE ACT TO APPOINT A CONCILIATION OFFICER.

DECISION OF BOARD MEMBER J. D. BELL: MAY 12, 1972.

I DISAGREE WITH THE DECISION OF THE MAJORITY OF THE BOARD. THE BASIC DISPUTE IN THIS CASE IS "CAN AN EMPLOYERS ASSOCIATION ALTER ITS COMPOSITION FOR PURPOSES OF BARGAINING FOR A RENEWAL OF AN AGREEMENT OR MUST IT CONTINUE TO BARGAIN IN ITS PAST FORM UNTIL IT OBTAINS PERMISSION OF THE UNION TO MAKE SUCH CHANGE?"

SECTION 43(1) OF THE ACT MAKES A COLLECTIVE AGREEMENT ENTERED INTO BY AN EMPLOYEES ASSOCIATION ON BEHALF OF ITS MEMBERS, BINDING UPON EACH PERSON WHO IS A MEMBER OF SUCH ASSOCIATION, FOR THE TERM OF SUCH AGREEMENT.

SECTION 43(2) OF THE ACT STATES:

"WHERE AN EMPLOYERS' ORGANIZATION COMMENCES TO BARGAIN WITH A TRADE UNION OR COUNCIL OF TRADE UNIONS, IT SHALL DELIVER TO THE TRADE UNION, OR COUNCIL OF TRADE UNIONS A LIST OF THE NAMES OF THE EMPLOYERS ON WHOSE BEHALF IT IS BARGAINING AND, IN DEFAULT OF SO DOING, IT SHALL BE DEEMED TO BARGAIN FOR ALL MEMBERS OF THE EMPLOYERS' ORGANIZATION FOR WHOSE EMPLOYEES THE TRADE UNION OR COUNCIL OF TRADE UNIONS IS ENTITLED TO BARGAIN AND TO MAKE A COLLECTIVE AGREEMENT AT THAT TIME, EXCEPT AN EMPLOYER WHO, EITHER BY HIMSELF OR THROUGH THE EMPLOYERS' ORGANIZATION, HAS NOTIFIED THE TRADE UNION OR COUNCIL OF TRADE UNIONS IN WRITING BEFORE THE AGREEMENT WAS ENTERED INTO THAT HE WILL NOT BE BOUND BY A COLLECTIVE AGREEMENT BETWEEN THE EMPLOYERS' ORGANIZATION AND THE TRADE UNION OR COUNCIL OF TRADE UNIONS."

THE SECTION CONTEMPLATES THAT THE COMPOSITION OF AN EMPLOYEES ASSOCIATION MAY CHANGE. IT SPELS OUT HOW AND WHEN SUCH CHANGE MAY BE MADE. IT RESTRICTS NOTICE OF CHANGE TO THE COMMENCEMENT OF BARGAINING. IT REQUIRED NOTICE TO BE IN WRITING.

THE LETTER DATED NOVEMBER 29, 1972 (EXHIBITS 6A AND 6B) FROM THE COUNCIL OF PRINTING INDUSTRIES OF CANADA TO EACH OF THE LOCAL UNIONS, IN MY OPINION, SATISFIED THE REQUIREMENTS OF SECTION 43(2). THE FACT THAT THE COUNCIL OF PRINTING INDUSTRIES OF CANADA (A NATIONAL ORGANIZATION) IS TO REPRESENT THE EMPLOYERS FOR WHOM THE HAMILTON LOCAL HAS BARGAINING RIGHTS, AND ALSO WILL REPRESENT THE EMPLOYERS FOR WHOM THE TORONTO LOCAL HAS BARGAINING RIGHTS IS OF NO CONSEQUENCY. EACH EMPLOYER ASSOCIATION IS FREE TO APPOINT AN AGENT OF ITS CHOICE TO REPRESENT IT AT THE BARGAINING TABLE. APPARENTLY THIS COUNCIL ACTS AS BARGAINING AGENT TO SOME 125 EMPLOYERS IN VARIOUS EMPLOYER ORGANIZATIONS.

SECTION 15(1) OF THE ACT STATES:

"WHERE NOTICE HAS BEEN GIVEN UNDER SECTION 13 OR 45, THE MINISTER, UPON THE REQUEST OF EITHER PARTY, SHALL APPOINT A CONCILIATION OFFICER TO CONFER WITH THE PARTIES AND ENDEAVOUR TO EFFECT A COLLECTIVE AGREEMENT."

I AGREE WITH THE MAJORITY THAT THE QUESTION AT HAND IS TO DETERMINE WHO QUALIFIES AS A PARTY WITHIN THE MEANING OF THIS SUBSECTION. THEY HAVE TAKEN SECTION 45(1) OF THE ACT AND READ IT ON ISOLATION TO DECIDE THAT "PARTY" CAN MEAN ONLY A PARTY TO A COLLECTIVE AGREEMENT. HOWEVER, SECTION 15(1) DOES NOT ISOLATE SECTION 45(1) BUT STATES "WHERE NOTICE HAS BEEN GIVEN UNDER SECTION 13 OR 45."

SECTION 45(3) OF THE ACT

"WHERE NOTICE IS GIVEN BY OR TO AN EMPLOYERS' ORGANIZATION THAT HAS A COLLECTIVE AGREEMENT WITH A TRADE UNION OR COUNCIL OF TRADE UNIONS, IT SHALL BE DEEMED TO BE A NOTICE GIVEN BY OR TO EACH MEMBER OF THE EMPLOYERS' ORGANIZATION WHO IS BOUND BY THE AGREEMENT OR WHO HAS CEASED TO BE A MEMBER OF THE EMPLOYERS' ORGANIZATION BUT HAS NOT NOTIFIED THE TRADE UNION OR COUNCIL OF TRADE UNIONS IN WRITING THAT HE HAS CEASED TO BE A MEMBER."

SPECIFICALLY REFERS TO NOTICE OF DESIRE FOR NEW COLLECTIVE AGREEMENT FOR EMPLOYER ASSOCIATIONS. THIS SECTION CONTEMPLATES THE POSSIBILITY OF CHANGE OF COMPOSITION OF THE EMPLOYERS ORGANIZATION AND THE GIVING OF NOTICE AS REQUIRED UNDER SECTION 43(2).

THEREFORE I BELIEVE SECTION 45(2) DEFINES WHO THE "PARTY" IS WHEN THE EMPLOYER ASSOCIATIONS ARE INVOLVED, RATHER THAN THE DEFINITION IN SECTION 45(1).

I CANNOT AGREE THAT THE STATUS QUO POSITION INHERENT IN SECTION 70(1) OF THE ACT WOULD BE DISTURBED OR THAT IT HAS ANY BEARING ON THIS MATTER. SECTION 43 PROVIDES FOR CHANGE AT THE TIME OF BARGAINING. SECTION 45(3) CONFIRMS THIS. THIS CHANGE MUST BE SOLELY WITHIN THE DISCRETION OF THE MEMBERS OF THE ASSOCIATION AND IS NOT SUBJECT TO APPROVAL OF THE UNION.

THEREFORE I WOULD ADVISE THE MINISTER TO GRANT CONCILIATION TO THE TORONTO LOCAL AND THE HAMILTON LOCAL SEPARATELY.

1949-72-R: BRICKLAYERS, MASONS & PLASTERERS INTERNATIONAL UNION OF AMERICA, LOCAL 13 (AAPPLICANT) v. MENARD BROTHERS LIMITED (RESPONDENT).

BEFORE: R.A. FURNESS, VICE CHAIRMAN AND BOARD MEMBERS J. D. BELL AND E. BOYER.

DECISION OF THE BOARD:

MAY 15, 1972.

1. THE NAME "MENARD BROTHERS LTD." APPEARING IN THE STYLE OF CAUSE OF THIS APPLICATION AS THE NAME OF THE RESPONDENT IS AMENDED TO READ: "MENARD BROTHERS LIMITED".

2. IN THIS APPLICATION FOR CERTIFICATION THE APPLICANT FILED FIVE DUES BOOKS WHICH ARE SIGNED BY THE MEMBERS AND COUNTERSIGNED BY AN OFFICER OF THE APPLICANT AND INDICATE THAT MONTHLY DUES HAVE BEEN PAID WITHIN THE SIX MONTH PERIOD IMMEDIATELY PRECEDING THE TERMINAL DATE OF THE APPLICATION. THE APPLICANT ALSO FILED A DULY COMPLETED FORM 54, DECLARATION CONCERNING MEMBERSHIP DOCUMENTS, CONSTRUCTION INDUSTRY.

3. THE RESPONDENT FILED A REPLY, A LIST CONTAINING THE NAMES OF FIVE EMPLOYEES AND SPECIMEN SIGNATURES WITHIN THE TIME FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

4. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(N) OF THE LABOUR RELATIONS ACT.

5. THE BOARD FURTHER FINDS THAT THIS IS AN APPLICATION FOR CERTIFICATION WITHIN THE MEANING OF SECTION 108 OF THE LABOUR RELATIONS ACT.

6. THE APPLICANT IS SEEKING CERTIFICATION ON BEHALF OF ITS REGULAR CRAFT UNIT OF BRICKLAYERS, BRICKLAYERS' APPRENTICES, STONEMASONS AND STONEMASONS' APPRENTICES IN THE UNITED COUNTIES OF STORMONT, DUNDAS AND GLENGARRY (REGULAR BOARD AREA No. 31). THE RESPONDENT PROPOSES THAT THE BARGAINING UNIT WHICH THE APPLICANT CLAIMS TO BE APPROPRIATE FOR COLLECTIVE BARGAINING OUGHT TO BE RESTRICTED TO COMMERCIAL AND INDUSTRIAL PROJECTS.

7. IN PARAGRAPH 13 OF ITS REPLY, THE RESPONDENT STATED:

"THE APPLICATION FOR BRICKLAYERS HEREIN RELATES TO ALL BRICKLAYING WORK ASSOCIATED WITH THE RESPONDENT'S BUSINESS AS GENERAL CONTRACTORS AND DOES NOT DIFFERENTIATE BETWEEN THE COMMERCIAL AND INDUSTRIAL WORK DONE BY THE RESPONDENT AND THE RESIDENTIAL WORK DONE BY THE SAID RESPONDENT. THE BRICKLAYERS PLASTERERS AND MASONS EMPLOYED BY THE RESPONDENT FOR ITS RESIDENTIAL WORK ARE INDEPENDENT CONTRACTORS AND NOT EMPLOYEES OF THE RESPONDENT AND TO THE BEST OF THE RESPONDENT'S KNOWLEDGE ARE NOT MEMBERS OF THE UNION MAKING THE APPLICATION HEREIN AND

CONSEQUENTLY THE RESPONDENT OBJECTS TO BEING CERTIFIED FOR ALL THE BRICKLAYERS' WORK ASSOCIATED WITH THE RESPONDENT'S BUSINESS AS A GENERAL CONTRACTORS."

8. IN PARAGRAPH 14(3) OF ITS REPLY THE RESPONDENT HAS REQUESTED A HEARING IN THIS APPLICATION BY THE BOARD AND IN SUPPORT OF THIS REQUEST HAS STATED:

"(A) THE APPLICATION HEREIN MAKE NO DIFFERENTIATION BETWEEN THE COMMERCIAL AND INDUSTRIAL ASPECT AND RESIDENTIAL ASPECT OF THE RESPONDENT'S BUSINESS AND THE RESPONDENT HEREIN STRONGLY OBJECTS TO BEING CERTIFIED FOR BRICK-LAYER (SIC) PLASTERERS & MASONS FOR ITS RESIDENTIAL BUSINESS.

(B) THE RESPONDENT WOULD LIKE TO SUBMIT TO THE BOARD ITS VIVA VOCE REPRESENTATION AND GIVE THE NECESSARY EVIDENCE THAT THE CERTIFICATION APPLICATION HEREIN SHOULD ONLY RELATE TO THE COMMERCIAL AND INDUSTRIAL DIVISION OF ITS BUSINESS AS GENERAL CONTRACTORS."

9. THE RESPONDENT HAS PROPOSED THAT THE APPROPRIATE BARGAINING UNIT BE RESTRICTED TO COMMERCIAL AND INDUSTRIAL PROJECTS. IT IS NOT THE PRACTICE OF THE BOARD TO DEFINE BARGAINING UNITS WITH RESPECT TO THE NATURE OF THE WORK PERFORMED OR WITH RESPECT TO CERTAIN PROJECTS.

10. IN PARAGRAPH 13 OF ITS REPLY, THE RESPONDENT HAS STATED AS A PROPOSITION THAT THE BRICKLAYERS WHO PERFORM WORK FOR THE RESPONDENT'S RESIDENTIAL UNDERTAKINGS ARE INDEPENDENT CONTRACTORS. THE BOARD EXPRESSES NO OPINION ON THIS PROPOSITION BECAUSE IT DOES NOT HAVE EVIDENCE BEFORE US CONCERNING WHAT IS APPARENTLY A FUTURE STATE OF AFFAIRS. HOWEVER, ASSUMING WITHOUT DECIDING, THAT THE RESPONDENT'S PROPOSITION WITH REGARD TO ITS FUTURE RESIDENTIAL UNDERTAKINGS IS CORRECT, IT IS CLEAR THAT INDEPENDENT CONTRACTORS ASSOCIATED WITH THE RESPONDENT ARE NOT EMPLOYEES AND WOULD THEREFORE NOT BE COVERED BY ANY CERTIFICATE ISSUED BY THE BOARD. IN THE EVENT THAT THE RESPONDENT IS CORRECT IN ITS VIEW OF THE BRICKLAYERS WHO WILL BE ASSOCIATED WITH IT IN ITS RESIDENTIAL UNDERTAKINGS, THEN A CERTIFICATE ISSUED TO THE APPLICANT WITH RESPECT TO THE BARGAINING UNIT FOR WHICH IT IS SEEKING CERTIFICATION WOULD HAVE NO APPLICATION TO SUCH INDEPENDENT CONTRACTORS.

11. THE MATTERS RAISED BY THE RESPONDENT IN PARAGRAPH 14(3) OF ITS REPLY HAVE BEEN CONSIDERED BY THE BOARD IN SETTING OUT ITS VIEWS

IN PARAGRAPH 10 HEREIN. HOWEVER, IN THE EVENT THAT THE BRICKLAYERS ASSOCIATED WITH THE RESPONDENT IN ITS FUTURE RESIDENTIAL UNDERTAKINGS ARE EMPLOYEES OF THE RESPONDENT AND NOT INDEPENDENT CONTRACTORS AS ENVISAGED BY THE RESPONDENT, THEN THE DISTINCTION WHICH THE RESPONDENT URGES ON THE BOARD WITH RESPECT TO COMMERCIAL, INDUSTRIAL AND RESIDENTIAL WORK IS MORE PROPERLY THE SUBJECT MATTER OF COLLECTIVE BARGAINING BETWEEN THE APPLICANT AND THE RESPONDENT.

12. IN APPLICATIONS FOR CERTIFICATION FILED UNDER THE CONSTRUCTION INDUSTRY PROVISIONS OF THE LABOUR RELATIONS ACT, THE BOARD NEED NOT HOLD A HEARING. REFERENCE IS MADE TO SECTION 91(13) OF THE LABOUR RELATIONS ACT. IT IS THE PRACTICE OF THE BOARD TO HOLD A HEARING IN SUCH CASES WHERE A USEFUL PURPOSE WOULD BE SERVED. THE BOARD HAS CONSIDERED THE REPRESENTATIONS OF THE RESPONDENT IN THIS MATTER AND IS OF THE VIEW THAT NO USEFUL PURPOSE WOULD BE SERVED BY HOLDING A HEARING IN THIS APPLICATION. ACCORDINGLY, THE REQUEST OF THE RESPONDENT FOR A HEARING OF THIS APPLICATION BY THE BOARD IS DENIED. HOWEVER, IN THE EVENT THAT THE RESPONDENT AS OF THE OPINION THAT THE BOARD HAS ERRED IN A MATERIAL RESPECT, IT IS OPEN TO THE RESPONDENT TO ASK THE BOARD TO RECONSIDER ITS DECISION PURSUANT TO SECTION 95(1) OF THE LABOUR RELATIONS ACT.

13. HAVING REGARD TO THE REPRESENTATIONS BEFORE THE BOARD, THE BOARD FURTHER FINDS THAT ALL BRICKLAYERS AND BRICKLAYERS' APPRENTICES, STONEMASONS AND STONEMASONS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE UNITED COUNTIES OF STORMONT, DUNDAS AND GLENGARRY, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

14. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN SIXTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON MAY 10, 1972 THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 92(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

15. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

1417-71-U: CANADIAN UNION OF PUBLIC EMPLOYEES (COMPLAINANT) V. TORONTO GENERAL HOSPITAL (RESPONDENT).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS O. HODGES AND J. E. C. ROBINSON, Q.C.

APPEARANCES AT THE HEARING: L. A. MACLEAN, W. ACTON AND K. GAYLE FOR THE COMPLAINANT; W. J. WHITTAKER, Q.C. AND L. R. McCLOSKEY FOR THE RESPONDENT.

DECISION OF THE BOARD:

MAY 15, 1972.

1. THIS IS A COMPLAINT BROUGHT UNDER SECTION 79 OF THE LABOUR RELATIONS ACT IN WHICH THE COMPLAINANT ALLEGES THAT KURT GAYLE HAS BEEN DEALT WITH BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF SECTIONS 56, 58, 61 AND 70 OF THE ACT.

2. THE COMPLAINANT ALLEGES THAT ON OR ABOUT FRIDAY, DECEMBER 17, 1971, THE RESPONDENT TERMINATED THE EMPLOYMENT OF GAYLE BECAUSE OF, AMONG OTHER THINGS, HIS ACTIVE PARTICIPATION IN AN APPLICATION FOR TERMINATION OF BARGAINING RIGHTS OF SERVICE EMPLOYEES' UNION LOCAL 204. THIS APPLICATION RESULTED IN A DECLARATION BY THE ONTARIO LABOUR RELATIONS BOARD IN SEPTEMBER 1971 TERMINATING THE BARGAINING RIGHTS OF THAT UNION. THE COMPLAINANT ALSO ALLEGES THAT THE TERMINATION OF GAYLE WAS BECAUSE OF HIS SUPPORT FOR THE ORGANIZATIONAL CAMPAIGN OF THE COMPLAINANT UNION AND BECAUSE OF HIS ACTIVITY AS PRESIDENT OF LOCAL 2001 OF THE COMPLAINANT UNION, WHICH WAS SUBSEQUENTLY CERTIFIED AS BARGAINING AGENT FOR THE EMPLOYEES IN THE BARGAINING UNIT FORMERLY REPRESENTED BY SERVICE EMPLOYEES' UNION LOCAL 204.

3. THERE IS NO DOUBT UPON THE EVIDENCE THAT GAYLE TOOK AN ACTIVE AND LEADING PART IN BRINGING ABOUT THE TERMINATION OF SERVICE EMPLOYEES' UNION LOCAL 204 AND THAT HE WAS PROMINENT IN THE ORGANIZATIONAL CAMPAIGN OF THE COMPLAINANT UNION. HE WAS ELECTED PRESIDENT OF LOCAL 2001 OF THE COMPLAINANT UNION AND WAS ZEALOUS IN PRESSING UNION DEMANDS UPON THE RESPONDENT.

4. WITHOUT REVIEWING THE WHOLE OF THE EVIDENCE, WE ARE INCLINED TO AGREE THAT IT CONFIRMS THE ASSESSMENT OF GAYLE MADE BY COUNSEL FOR THE COMPLAINANT AS AN ACTIVE, ARTICULATE UNIONIST, EDITOR, WRITER AND ORGANIZER. HIS ACTIVITIES WERE INTENDED TO BE AND WERE WELL KNOWN TO THE RESPONDENT.

5. IN THE PURSUIT OF HIS OBJECTIVES, GAYLE WAS LOYALLY AND ACTIVELY SUPPORTED BY, AMONG OTHER EMPLOYEES, ONE EMMANUEL CHRISAFAKIS. THE LATTER TOOK PART IN THE TERMINATION PROCEEDINGS BUT WAS NOT INVOLVED TO ANY EXTENT IN PROCEEDINGS LEADING UP TO THE CERTIFICATION OF THE COMPLAINANT UNION. ON DECEMBER 10, 1971, MR. CHRISAFAKIS WAS DISCHARGED. ACCORDING TO HIS EVIDENCE, HE WAS GIVEN NO REASON BY THE RESPONDENT FOR THIS ACTION ON ITS PART.

6. AS SOON AS MR. GAYLE HEARD OF CHRISAFAKIS' DISCHARGE HE CALLED MR. McCLOSKEY, THE DIRECTOR OF PERSONNEL FOR THE RESPONDENT HOSPITAL.

GAYLE TESTIFIED THAT McCLOSKEY WAS NOT AWARE OF THE DISCHARGE. A SECOND CONVERSATION TOOK PLACE BETWEEN THEM LATER IN THE AFTERNOON AT WHICH TIME, McCLOSKEY TOLD GAYLE THAT HE HAD RECEIVED A PRELIMINARY REPORT ON THE INCIDENT - THAT THE MATTER HAD NOT BEEN FULLY REVIEWED BY HIM AND THAT HE WOULD BE IN TOUCH WITH GAYLE THE FOLLOWING WEEK. THESE CONVERSATIONS TOOK PLACE ON FRIDAY, DECEMBER 10, 1971, THAT IS, THE DATE OF THE DISCHARGE.

7. ON THE EVENING OF DECEMBER 10TH, A MEETING OF THE EXECUTIVE BOARD OF LOCAL 2001 OF CANADIAN UNION OF PUBLIC EMPLOYEES WAS HELD. GAYLE ATTENDED THE MEETING. HE STATED THAT HE PLANNED TO ENCOURAGE A WORK STOPPAGE. HE WAS NOT REQUIRED TO WORK ON DECEMBER 11, 1971.

8. AS THE RESULT OF THE MEETING OF DECEMBER 10TH, A DEMONSTRATION WAS HELD AT THE ENTRANCE TO THE HOSPITAL THE FOLLOWING MORNING, DECEMBER 11, 1971, COMMENCING ABOUT 6.00 A.M. THE MEETING WAS TO PROTEST THE DISMISSAL OF CHRISAFAKIS, AND TO EMPHASIZE OTHER DEMANDS. SOME OF THE PERSONS TAKING PART IN THE DEMONSTRATION CARRIED SIGNS. A LEAFLET IN THE FOLLOWING FORM WAS DISTRIBUTED TO EMPLOYEES:

"THIS DEMONSTRATION BY TORONTO GENERAL HOSPITAL MEMBERS OF C.U.P.E. LOCAL 2001 HAS BEEN CALLED IN ORDER TO PERSUADE THE T.G.H. ADMINISTRATION TO MEET THE FOLLOWING DEMANDS:

1. WE DEMAND A GUARANTEE FROM THE T.G.H. ADMINISTRATION THAT THEY WILL CAUSE NO MORE DELAY IN GETTING C.U.P.E. CERTIFIED AS OUR BARGAINING AGENT AT T.G.H.
2. WE DEMAND A GUARANTEE FROM THE T.G.H. ADMINISTRATION THAT THEY WILL ENTER INTO MEANINGFUL CONTRACT NEGOTIATIONS WITH C.U.P.E. LOCAL 2001 IMMEDIATELY FOLLOWING THE CERTIFICATION OF C.U.P.E. BY THE ONTARIO LABOUR RELATIONS BOARD.

WE WANT A GOOD CONTRACT !

WE WANT DECENT WAGES !

WE WANT IMPROVED WORKING CONDITIONS !

3. WE DEMAND A GUARANTEE FROM THE T.G.H. ADMINISTRATION THAT THEY WILL MAKE NO MORE SCHEDULE CHANGES --- SUCH AS THAT WHICH WOULD GIVE OUR MEMBERS ONLY ONE WEEKEND OFF EVERY THREE MONTHS

WE WANT AN END TO ALL HARRASSMENT AND
 INSULTS FROM SUPERVISORS THAT WE HAVE
 BEEN ENDURING SINCE WE'VE BEEN WAITING
 FOR CERTIFICATION OF C.U.P.E.

4. WE DEMAND IMMEDIATE REINSTATEMENT OF
 EMMANUEL CHRISAFAKIS WHO WAS FIRED
 FRIDAY, DECEMBER 10, 1971, WITHOUT
 NOTICE AND FOR NOT STATED CAUSE.

DECEMBER 10, 1971"

9. GAYLE ATTENDED THIS DEMONSTRATION. HE ADMITTED THAT HE TOLD
 EMPLOYEES NOT TO GO TO WORK - TO FORM A PICKET LINE - OR TO GO HOME AND
 REPORT SICK. HE WAS DISSATISFIED WITH THE OUTCOME OF THE DEMONSTRATION,
 AND IN A LETTER TO THE MEMBERS OF THE EXECUTIVE BOARD AND A FEW OTHER
 EMPLOYEES ANNOUNCED HIS RESIGNATION. THE LETTER DATED DECEMBER 11, 1971
 WAS IDENTIFIED BY GAYLE AND ENTERED IN EVIDENCE. IN ADDITION TO THE RE-
 SIGNATION, THE LETTER CONTAINS GAYLE'S ACCOUNT TO THE HAPPENING OF DECEM-
 BER 10TH AND 11TH, 1971. IT IS AS FOLLOWS:

"234 PACIFIC AVENUE
 TORONTO, ONTARIO
 DECEMBER 11, 1971

DEAR

I HEREBY TENDER MY RESIGNATION FROM THE
 EXECUTIVE COMMITTEE OF C.U.P.E. LOCAL 2001.

AT A MEETING HELD ON DECEMBER 10, 1971,
 AT 2 COLLEGE ST. 6 OF 8 MEMBERS OF THE EXECUTIVE
 COMMITTEE VOTED IN FAVOUR OF A WALKOUT TO FORCE
 THE HOSPITAL TO REINSTATE CHRIS AND TO BRING THE
 ISSUES OF UNION CERTIFICATION AND THE CONTRACT
 TO A HEAD.

IN ADDITION, 7 OF THE 10 MEMBERS OF THE
 FULL EXECUTIVE BOARD (COMPOSED OF THE EXECUTIVE
 COMMITTEE PLUS THE SECRETARY AND TREASURER) VOTED
 IN FAVOUR OF WALKOUT ACTION. (THE OVERALL VOTE
 WAS 21-7).

ON DECEMBER 11, 1971, AT 5:53 A.M. A PICKET
 LINE WAS SET UP IN FRONT OF THE EMPLOYEES' EN-
 TRANCE ON ELIZABETH ST. (AS DECIDED THE NIGHT
 BEFORE). IN THE BEGINNING ONLY FOUR PEOPLE WERE

PRESENT TO CARRY SIGNS AND PICKET. AT 7:05 A.M., WHEN THE PICKET LINE'S EFFECTIVENESS BEGAN TO DISINTEGRATE AND PEOPLE BEGAN MOVING INTO THE HOSPITAL, ONLY 6 OR 7 PEOPLE WERE ACTIVELY HOLDING THE LINE.

AT 7:15, WHEN THE COLLAPSE WAS TOTAL AND THE REMAINING FEW (30 OR 40) BRAVE SOULS WERE TOLD BY THOSE OF US CARRYING SIGNS TO ENTER THE HOSPITAL TO AVOID UNNECESSARY SUFFERING, ONLY 1 MEMBER OF THE EXECUTIVE BOARD, MYSELF, WAS PRESENT ON THE LINE.

OUT OF THE FULL SLATE OF 15 ELECTED OFFICERS ONLY MYSELF AND THE THREE TRUSTEES COMPLIED WITH THE DECISION TO PICKET TAKEN THE NIGHT BEFORE.

ONE MEMBER OF THE EXECUTIVE COMMITTEE WENT SO FAR AS TO CROSS THE PICKET LINE AND GO TO WORK.

I CONCEDE THAT 1 OR 2 MEMBERS OF THE EXECUTIVE BOARD MAY HAVE LEGITIMATE REASONS FOR NOT BEING ON THE LINE AT 6:00 A.M. BUT THE FACT THAT ONLY 1 OUT OF 10 SHOWED UP FILLS ME WITH DISGUST AND SHAME.

REMEMBER: A BROTHER WHO FOUGHT WITH US AS HARD AS ANYONE TO GET RID OF 204 WAS FIRED. WE VOTED TO PULL OUT OUR MEMBERS TO FORCE HIS REINSTATEMENT, THEN DID NOT FOLLOW THE DICTATE OF THE VOTE.

THERE WILL BE THOSE APOLOGISTS ON THE EXECUTIVE BOARD WHO WILL SAY: "I TOLD YOU SO... THE WHOLE THING FAILED." THIS MAY BE SELF-JUSTIFICATION FOR THEM. BUT I SOLEMNLY SWEAR THAT --- HAD THE EXEC- OF THE LOCAL SUPPORTED IT AS THEY VOTED TO DO --- THE WALKOUT WOULD HAVE BEEN A TREMENDOUS SUCCESS. FOR THREE-QUARTERS OF AN HOUR WE WERE HOLDING OUR OWN WITH 6 PICKETERS (AND SEVERAL OF THOSE 6 WERE FACES RELATIVELY UNKNOWN TO MANY MEMBERS). IF WE HAD HAD 9 MORE --- ESPECIALLY THE OTHER 9 ELECTED MEMBERS OF THE EXECUTIVE BOARD --- I BELIEVE THE WALKOUT WOULD HAVE BEEN A SMASHING SUCCESS. (THOSE WHO PROPHECY DEFEAT MAKE A SELF-FULFILLING PROPHECY.)

I AM DEEPLY SORRY ABOUT THE EVENTS OF THE PAST TWO DAYS. BUT NOW THAT THESE EVENTS OCCURRED, I NO LONGER WISH TO BE A PART OF THE EXECUTIVE OF LOCAL 2001.

AND WHEN THE AXE FALLS ON ME THIS WEEK FOR MY ROLE IN SATURDAY'S ABORTIVE ATTEMPT, I AM WILLING TO FACE THE MUSIC ALONE (OR ALONG-SIDE ANY OTHERS WHO MAY GET THE AXE), JUST AS SO MANY OF YOU WERE WILLING TO LET CHRIS FACE THE MUSIC ALONE.

UNTIL THE DAY I AM FIRED I WILL CONTINUE TO DO MY BEST TO UPHOLD THE PRINCIPLES OF TRADE UNIONISM AS AN ACTIVE AND MILITANT RANK-AND-FILE MEMBER. I CAN ONLY HOPE THAT SOMEDAY LOCAL 2001 MEMBERS WILL ELECT LEADERSHIP WORTHY OF THE NAME.

FRATERNALLY,

SIGNED KURT"

10. ON DECEMBER 17TH, GAYLE HAD AN INTERVIEW WITH MCCLOSKEY AT ABOUT 2:15 IN THE AFTERNOON IN THE LATTER'S OFFICE. THE PERSONNEL MANAGER WAS ALSO PRESENT. MCCLOSKEY INQUIRED AS TO WHAT PART GAYLE HAD TAKEN IN THE DEMONSTRATION OF DECEMBER 11TH. HE TOLD MCCLOSKEY THAT HE HAD BEEN PRESENT, HAD CARRIED SIGNS AND HAD GIVEN OUT LEAFLETS AND HAD TALKED TO PEOPLE UNTIL THE DEMONSTRATION ENDED AT ABOUT 7:15 A.M. GAYLE TOLD THE BOARD THAT MCCLOSKEY ASKED HIM IF HE HAD TOLD PEOPLE NOT TO GO TO WORK AND THAT HE HAD REPLIED THAT HE HAD NO COMMENT WITH RESPECT TO THAT QUESTION. MCCLOSKEY PUT THE QUESTION AGAIN AND GAYLE TOLD HIM THAT HE FELT UNDER NO OBLIGATION TO DISCUSS UNION AFFAIRS WITH HIM. GAYLE TESTIFIED THAT MCCLOSKEY TOLD HIM HE HAD EVIDENCE THAT HE, GAYLE, HAD ADVOCATED AT THE DEMONSTRATION THAT PEOPLE STAY AWAY FROM WORK. GAYLE WAS THEN INFORMED THAT THE MATTER WAS TO BE DELIBERATED BY THE MANAGEMENT AND WAS TOLD THAT MCCLOSKEY WOULD GET IN TOUCH WITH HIM LATER IN THE AFTERNOON. AT THE END OF THE DAY, GAYLE WAS CALLED IN TO MCCLOSKEY'S OFFICE WHERE HE WAS ADVISED THAT THERE HAD BEEN A MEETING OF THE SENIOR ADMINISTRATION OFFICIALS AND THAT IT WAS THEIR DECISION TO TERMINATE GAYLE'S EMPLOYMENT BECAUSE HE HAD TRIED TO INFLUENCE PEOPLE STAY AWAY FROM WORK. GAYLE REQUESTED MCCLOSKEY TO GIVE HIM THE DECISION IN WRITING AND MCCLOSKEY AGREED TO DO THIS.

11. GAYLE SUBSEQUENTLY RECEIVED A LETTER FROM THE RESPONDENT DATED THE 20TH DAY OF DECEMBER, 1971 OVER THE SIGNATURE OF MCCLOSKEY.

THE LETTER, WHICH IS PRODUCED IN FULL BELOW, MAKES REFERENCE TO A MEMORANDUM OF FEBRUARY 4, 1971. GAYLE CONFIRMED IN EVIDENCE THAT REFERENCE HAD BEEN MADE TO THIS MEMORANDUM DURING HIS INTERVIEW ON DECEMBER 17TH AND THAT HE ACKNOWLEDGED THAT HE WAS AWARE OF THE MEMORANDUM. THE LETTER OF DECEMBER 20, 1971 READS AS FOLLOWS:

"101 COLLEGE STREET,
TORONTO 2, ONTARIO,
DECEMBER 20TH, 1971.

MR. KURT GAYLE,
234 PACIFIC AVENUE,
TORONTO, ONTARIO.

DEAR MR. GAYLE:

THIS WILL CONFIRM THE INTERVIEW WHICH WAS HELD IN THIS OFFICE AT APPROXIMATELY 4:15 P.M. FRIDAY, DECEMBER 17TH, 1971.

AT THAT TIME I REFERRED TO A MEMORANDUM DATED FEBRUARY 4TH, 1971, A COPY OF WHICH HAD BEEN GIVEN TO YOU AND OTHERS AND WITH WHICH YOU CONFIRMED YOU WERE FULLY FAMILIAR. CONTAINED IN THAT MEMORANDUM WAS A SPECIFIC STATEMENT TO THE EFFECT THAT THE PENALTY FOR ENCOURAGING A WORK STOPPAGE OR OTHER DISRUPTIVE ACTION WOULD BE DISCHARGE.

I HAD INDICATED TO YOU EARLIER ON DECEMBER 17TH THAT WE HAVE EVIDENCE THAT YOU ENCOURAGED A WORK STOPPAGE ON SATURDAY, DECEMBER 11TH, 1971.

II THE CIRCUMSTANCES YOU WERE ADVISED THAT YOUR EMPLOYMENT WITH THIS HOSPITAL TERMINATED EFFECTIVE FRIDAY, DECEMBER 17TH, 1971.

YOURS VERY TRULY,

SIGNED

L. R. McCLOSKEY,
DIRECTOR OF PERSONNEL."

LRMcC/AE

12. IT IS SOMEWHAT IRONIC THAT CHRISAFAKIS, FOLLOWING McCLOSKEY'S INVESTIGATION, WAS REINSTATED BY THE RESPONDENT ALTHOUGH WITH SOME LOSS

OF PAY. HE THEN RESIGNED IN PROTEST OF GAYLE'S DISMISSAL AND WAS AGAIN TERMINATED ON JANUARY 7, 1972 BECAUSE OF HIS FAILURE TO RETURN TO WORK AFTER BEING REQUESTED TO DO SO SEVERAL TIMES.

13. WE ARE UNABLE TO FIND SUPPORT IN THE EVIDENCE FOR THE ARGUMENT SO ABLY AND FORCEFULLY ADVANCED BY COUNSEL FOR THE COMPLAINANT THAT GAYLE'S TERMINATION WAS BASED, NOT ON THE INCIDENT OF DECEMBER 11TH, BUT RATHER UPON THE WHOLE HISTORY OF HIS RELATIONSHIP WITH THE RESPONDENT AND THE PREDECESSOR TRADE UNION. THE BOARD IS COMPELLED TO FIND THAT GAYLE'S TERMINATION ON DECEMBER 17TH, 1971 IS ATTRIBUTABLE SOLELY TO HIS ACTIONS WITH RESPECT TO THE DEMONSTRATION OF DECEMBER 10TH. WE FIND, ON THE BASIS OF HIS EVIDENCE, THAT GAYLE DESIGNED AND PROMOTED THIS DEMONSTRATION FOR THE PURPOSE OF BRINGING ABOUT A STRIKE OR WALK-OUT OF EMPLOYEES OF THE RESPONDENT.

14. THE DEMONSTRATION OF DECEMBER 11TH TOOK PLACE AFTER THE TERMINATION OF SERVICE EMPLOYEES' UNION LOCAL 204 ON SEPTEMBER 21, 1971 AND DURING THE PERIOD IN WHICH THE COMPLAINANT UNION'S APPLICATION FOR CERTIFICATION WAS BEFORE THE ONTARIO LABOUR RELATIONS BOARD. THE CERTIFICATE WAS GRANTED TO THE COMPLAINANT UNION ON JANUARY 10, 1972. THERE WAS, OF COURSE, NO COLLECTIVE AGREEMENT IN OPERATION NOR HAD THERE BEEN A CONCILIATION OFFICER APPOINTED BY THE MINISTER AT THE TIME THAT THE DEMONSTRATION TOOK PLACE. A STRIKE ON SUCH CIRCUMSTANCES WOULD HAVE CLEARLY BEEN UNLAWFUL HAVING REGARD TO THE PROVISIONS OF SECTION 63 OF THE LABOUR RELATIONS ACT. IT FOLLOWS THEN THAT GAYLE'S ACTIONS ON DECEMBER 11, 1971, FOR WHICH HE WAS TERMINATED, CONSTITUTED A VIOLATION OF SECTION 65 OF THE ACT WHICH PROVIDES:

"NO TRADE UNION OR COUNCIL OF TRADE UNIONS SHALL CALL OR AUTHORIZE OR THREATEN TO CALL OR AUTHORIZE AN UNLAWFUL STRIKE AND NO OFFICER, OFFICIAL OR AGENT OF A TRADE UNION OR COUNCIL OF TRADE UNION SHALL COUNSEL, PROCURE, SUPPORT OR ENCOURAGE AN UNLAWFUL STRIKE OR THREATEN AN UNLAWFUL STRIKE."

15. IT GOES WITHOUT SAYING THAT THE ACT AFFORDS NO PROTECTION TO ANY PERSON WHO SEEKS TO PROMOTE ENDS, HOWEVER DESIRABLE THEY MIGHT APPEAR TO HIM TO BE, BY MEANS WHICH ARE CONTRARY TO THE PROVISIONS OF THE ACT.

16. IN THE RESULT, WE FIND THAT THE COMPLAINANT HAS NOT ESTABLISHED THAT THE RESPONDENT HAS DEALT WITH KURT GAYLE CONTRARY TO THE PROVISIONS OF THE LABOUR RELATIONS ACT. THE COMPLAINT IS ACCORDINGLY DISMISSED.

1349-71-R: LOCAL 1190 OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. 228095 INVESTMENTS LIMITED, CARRYING ON BUSINESS UNDER THE NAME OF ADENA FORMING LTD. (RESPONDENT) V. CANADIAN UNION OF CONSTRUCTION WORKERS (INTERVENER #1) V. LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (INTERVENER #2).

BEFORE: R. A. FURNESS, VICE-CHAIRMAN AND BOARD MEMBERS E. BOYER AND F. W. MURRAY.

DECISION OF THE BOARD: MAY 16, 1972.

1. IN A LETTER TO THE BOARD DATED MARCH 10, 1972, INTERVENER #1 HAS REQUESTED THE BOARD TO RULE UPON THE PROPRIETY AND RELEVANCE OF CERTAIN QUESTIONS WHICH IT PROPOSES TO ASK OF CERTAIN ALLEGED EMPLOYEES OF THE RESPONDENT.

2. INTERVENER #1 HAS FILED EVIDENCE OF MEMBERSHIP IN THIS MATTER WITH RESPECT TO CERTAIN EMPLOYEES WHOSE NAMES APPEAR ON THE LIST OF EMPLOYEES INITIALLY FILED BY THE RESPONDENT. IT APPEARS, ON THE BASIS OF THE FACTS PRESENTLY BEFORE THE BOARD, THAT INTERVENER #1 HAS STATUS TO INTERVENE IN THIS APPLICATION, TO MAKE REPRESENTATIONS ON THE APPROPRIATE BARGAINING UNIT, THE LIST OF EMPLOYEES AND TO FILE ALLEGATIONS OF IMPROPER OR IRREGULAR CONDUCT.

3. IN A DECISION DATED DECEMBER 16, 1971, THE BOARD APPOINTED MR. D. K. AYNLEY, EXAMINER, TO INQUIRE INTO AND REPORT BACK TO THE BOARD ON THE LISTS AND COMPOSITION OF THE BARGAINING UNITS PROPOSED BY THE APPLICANT, THE RESPONDENT AND INTERVENER #2.

4. INTERVENER #1 HAS ADVANCED THE FOLLOWING PROPOSITIONS FOR CONSIDERATION BY THE BOARD:

I. THAT THE EXAMINER RE-ATTEND AT THE RESPONDENT'S OFFICE FOR THE PURPOSE OF ACQUIRING ANY INFORMATION THAT MAY BE AVAILABLE REGARDING THE SUBSTANCE OF THE INTERVENTION FILED BY INTERVENER #1 - MORE PARTICULARLY ANY DOCUMENTS WHICH MAY PERTAIN TO THE RELATIONSHIP BETWEEN 228095 INVESTMENTS LIMITED, ADENA INVESTMENTS LIMITED AND ADENA FORMING.

II. THAT INTERVENER #1 INTENDS TO CROSS-EXAMINE THE WITNESSES WHICH WERE CALLED IN THE EXAMINATION AND TO POSSIBLY CALL ITS OWN WITNESSES REGARDING THE ISSUES RAISED BY INTERVENER #1 IN ITS INTERVENTION AND MORE PARTICULARLY THE EMPLOYMENT HISTORY OF THE WITNESSES AND THE

OFFICERS OF THE COMPANY AS THAT HISTORY MIGHT RELATE TO 228095 INVESTMENTS LIMITED, ADENA INVESTMENTS LIMITED AND ADENA FORMING.

- III. THAT IN THE PROCESS OF INQUIRING INTO THE LIST AND COMPOSITION OF ANY BARGAINING UNIT IT IS NECESSARILY INCIDENTAL THERETO THAT THE EXAMINER INQUIRE INTO THE IDENTITY OF THE EMPLOYER OR EMPLOYERS OF THE EMPLOYEES AFFECTED BY THE APPLICATION. INTERVENER #1 ALLEGES THAT THE RESPONDENT IS AFFILIATED IN SOME MANNER WITH ADENA INVESTMENTS LIMITED THEREBY BEING A PARTY TO FRAUD AND THE RESPONDENT'S STATUS MUST BE DETERMINED IN ORDER TO PROPERLY DETERMINE AND REPORT ON THE LIST AND COMPOSITION OF THE BARGAINING UNIT. IF THE BOARD DECIDES THAT THE EXAMINER'S TERMS OF REFERENCE DO NOT INCLUDE THE AFOREMENTIONED, THEN HIS TERMS OF REFERENCE SHOULD BE AMENDED TO INCLUDE THE SUBJECT MATTER ABOVE.
- IV. THAT IF THE BOARD DECIDES THAT THE EXAMINER DOES NOT HAVE AUTHORITY TO DELVE INTO THE RESPONDENT'S CORPORATE STRUCTURE AND BACKGROUND AND DECIDE NOT TO ENLARGE THE EXAMINER'S TERMS OF REFERENCE, IT IS SUBMITTED THAT ON CROSS-EXAMINATION OF WITNESSES, IT WOULD PROPERLY BE WITHIN THE SCOPE OF SUCH CROSS-EXAMINATION, THE IDENTITY OF THE EMPLOYER BEING RELEVANT, TO CROSS-EXAMINE THE WITNESSES ON THE TRUE IDENTITY OF THE RESPONDENT WHICH WOULD INCLUDE ITS ASSOCIATION, BOTH PAST AND PRESENT, WITH OTHER COMPANIES WITH A SIMILAR NAME AND IDENTICAL OFFICERS AND DIRECTORS. THESE ISSUES ARE, OF COURSE, RELEVANT TO THE LIST AND COMPOSITION OF THE BARGAINING UNIT AND THE ALLEGATION CONTAINED IN THE INTERVENTION FILED BY INTERVENER #1.
- V. THAT INTERVENER #1 SUBMITS THAT BY PARAGRAPH 2 OF THE DECISION OF THE BOARD DATED FEBRUARY 2, 1972, AND IN REACHING SAID DECISION, THE BOARD WAS OF THE OPINION THAT THE ALLEGATIONS, RAISED BY INTERVENER #1 SHOULD BE DECIDED ONLY AFTER THE EXAMINATION BECAUSE THE EXAMINATION WOULD BE RELEVANT TO THE ISSUES IN THE SAID INTERVENTION.

5. THE BOARD HAS CAREFULLY CONSIDERED THE REPRESENTATIONS OF THE PARTIES ON THE POINTS RAISED BY INTERVENER #1.

6. CONSIDERING THE FIRST PROPOSITION ADVANCED BY INTERVENER #1. THE TERMS OF THE APPOINTMENT OF THE EXAMINER ARE SET FORTH IN THE DECISION OF THE BOARD IN THIS MATTER DATED DECEMBER 16, 1971. THE EXAMINER IS NOT AUTHORIZED TO ACQUIRE THE INFORMATION WHICH INTERVENER #1 APPEARS TO BE DESIROUS OF DISCOVERING.

7. CONSIDERING THE SECOND PROPOSITION ADVANCED BY INTERVENER #1. THE APPOINTMENT OF THE EXAMINER IN THIS MATTER IS LIMITED TO THE TERMS OF HIS APPOINTMENT. ACCORDINGLY, THE EXAMINER IS AUTHORIZED TO INQUIRE INTO THE NAMES OF PERSONS ALLEGED BY ANY OF THE PARTIES TO THIS PROCEEDING TO HAVE BEEN IN THE EMPLOY OF THE RESPONDENT HEREIN ON THE DATE OF THE MAKING OF THIS APPLICATION AND THE NATURE OF THE WORK THEY PERFORMED. THE MATTERS RAISED BY INTERVENER #1 ARE NOT RELEVANT TO THE TERMS OF THE APPOINTMENT OF THE EXAMINER. INTERVENER #1 WILL NOT BE PERMITTED TO ASK QUESTIONS OF WITNESSES BEFORE THE EXAMINER OR TO CALL ITS OWN WITNESSES ON THE MATTERS ADVANCED IN THE SECOND PROPOSITION. THE BOARD NOTES THAT THE RESPONDENT APPEARS TO BE THE ONLY EMPLOYER WHICH IS A PARTY TO THIS PROCEEDING.

8. CONSIDERING THE THIRD PROPOSITION ADVANCED BY INTERVENER #1. IT IS NOT NECESSARILY INCIDENTAL TO THE INQUIRY OF THE EXAMINER FOR HIM TO GO BEYOND THE MATTERS REFERRED TO IN PARAGRAPH SEVEN HEREIN. THE REQUEST OF INTERVENER #1 THAT THE TERMS OF THE APPOINTMENT OF THE EXAMINER BE AMENDED TO INCLUDE THE ADDITIONAL SUBJECT MATTER REFERRED TO IN THE THIRD PROPOSITION ADVANCED BY INTERVENER #1 IS DENIED.

9. CONSIDERING THE FOURTH PROPOSITION ADVANCED BY INTERVENER #1. INTERVENER #1 WILL BE PERMITTED TO ASK QUESTIONS OF WITNESSES RELATING TO THE NAMES OF PERSONS ALLEGED BY ANY OF THE PARTIES TO THIS PROCEEDING TO HAVE BEEN IN THE EMPLOY OF THE RESPONDENT HEREIN ON THE DATE OF THE MAKING OF THIS APPLICATION AND THE NATURE OF THE WORK THEY PERFORMED. THE OTHER MATTERS ADVANCED IN THE FOURTH PROPOSITION BY INTERVENER #1 ARE NOT RELEVANT TO THE TERMS OF THE APPOINTMENT OF THE EXAMINER.

10. CONSIDERING THE FIFTH PROPOSITION ADVANCED BY INTERVENER #1. THE BOARD WAS NOT OF THE OPINION WHICH INTERVENER #1 HAS ATTRIBUTED TO ITS.

11. INTERVENER #1 HAS FILED CERTAIN ALLEGATIONS IN VERY GENERAL TERMS IN PARAGRAPH 4(3) OF ITS INTERVENTION. THE STAGE IN THIS PROCEEDING MAY WELL BE REACHED WHEN INTERVENER #1 IS CALLED UPON TO MAKE ITS REPRESENTATIONS TO THE BOARD IN CONNECTION WITH THE MATTERS IT HAS RAISED IN PARAGRAPH 4(3) OF ITS INTERVENTION. IT IS NOT, HOWEVER, THE

FUNCTION OF AN EXAMINER IN CONDUCTING HIS MEETINGS TO EXPAND THE SCOPE OF HIS INQUIRY FOR THE PURPOSE OF ATTEMPTING TO ELICIT INFORMATION AT THE BEHEST OF A PARTY TO THE PROCEEDING IN CONNECTION WITH SUCH PARTY'S ALLEGATIONS OF IMPROPER OR IRREGULAR CONDUCT OR FRAUD. IT IS SUCH PARTY'S RESPONSIBILITY TO INVESTIGATE AND SUBSTANTIATE ITS ALLEGATIONS BY THE INTRODUCTION OF ITS OWN EVIDENCE AT THE APPROPRIATE TIME BEFORE THE BOARD.

12. MR. D. K. AYSLEY, EXAMINER, IS DIRECTED TO CONTINUE HIS INQUIRY IN THIS MATTER.

1432-71-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 93 (APPLICANT) V. URBANDALE REALTY CORPORATION LIMITED (RESPONDENT).

BEFORE: R. A. FURNESS, VICE-CHAIRMAN AND BOARD MEMBERS E. BOYER AND F. W. MURRAY.

APPEARANCES AT THE HEARING: WILLIAM BURROWS AND MARK MCKENNY FOR THE APPLICANT; R. C. FILION AND F. MISMAS FOR THE RESPONDENT.

DECISION OF THE BOARD: MAY 16, 1972.

1. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(N) OF THE LABOUR RELATIONS ACT.

2. THE BOARD FURTHER FINDS THAT THIS IS AN APPLICATION FOR CERTIFICATION WITHIN THE MEANING OF SECTION 108 OF THE LABOUR RELATIONS ACT.

3. THE BOARD FURTHER FINDS THAT ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

4. HAVING REGARD TO THE DECISION OF THE BOARD IN THIS MATTER DATED MARCH 27, 1972, THE BOARD CONDUCTED AN EXAMINATION INTO THE DUTIES AND RESPONSIBILITIES OF ROGER ST. DENIS AT A HEARING IN THIS MATTER ON MAY 8, 1972. THE APPLICANT AND THE RESPONDENT ALSO CALLED EVIDENCE IN CONNECTION WITH THE DUTIES AND RESPONSIBILITIES OF ROGER ST. DENIS.

5. MR. ST. DENIS GAVE EVIDENCE THAT HE WAS HIRED AS A CARPENTER BY THE RESPONDENT AND THAT ON JANUARY 5, 1972, THE DATE OF THE MAKING

OF THIS APPLICATION, HE WAS PAID A SALARY AND WAS NOT HOURLY RATED. HOWEVER, WHEN HE DOES NOT COME TO WORK HE IS NOT PAID FOR THE PERIOD OF HIS ABSENCE. ON JANUARY 5, 1972, MR. ST. DENIS SPENT ALMOST ALL OF THE DAY DOING LAY-OUT WORK. THIS CONSISTED OF READING BLUE PRINTS FOR APPROXIMATELY ONE HOUR AND THEN PERFORMING LEVEL AND LINE WORK IN CONNECTION WITH THE LAY-OUT WORK HE WAS ASSIGNED TO DO BY THE RESPONDENT'S SUPERINTENDENT MR. FRANK MISMAS.

6. IN PERFORMING THE LAY-OUT WORK, MR. ST. DENIS WAS WORKING WITH A HAMMER, A TAPE, A PLUMB-BOB AND A LEVEL. HE HAS NO POWER TO HIRE, FIRE OR SUSPEND EMPLOYEES AND HAS NEVER RECOMMENDED THAT AN EMPLOYEE BE FIRED. MR. ST. DENIS INFORMED THE BOARD THAT HE HAS NO POWER TO GRANT TIME OFF TO ANY OF THE CARPENTERS WORKING WITH HIM. IN THE EVENT THAT ANY EMPLOYEE OF THE RESPONDENT REQUESTED TIME OFF, MR. ST. DENIS WOULD DISCUSS THE MATTER WITH THE SUPERINTENDENT WHO WOULD MAKE THE DECISION REGARDING THE GRANTING OF TIME OFF. THE SUPERINTENDENT HAS HIS OFFICE IN A SHACK ON THE JOB SITE AND SEES MR. ST. DENIS AT THE BEGINNING OF EACH WORKING DAY AND ALSO SEES HIM USUALLY, AT LEAST, TWO OR THREE TIMES DURING A WORKING DAY. IN THE EVENT THAT A CARPENTER WORKING WITH MR. ST. DENIS WAS NOT DOING HIS JOB PROPERLY, MR. ST. DENIS WOULD TAKE THE MATTER UP WITH THE SUPERINTENDENT. HE TESTIFIED THAT HE DOES NOT RECOMMEND WAGE INCREASES.

7. MR. ST. DENIS GAVE EVIDENCE THAT THE SUPERINTENDENT ASKS HIS ADVICE IF HE IS GOING TO HIRE ANY CARPENTERS AND THAT ON THE OCCASIONS, WHEN THE SUPERINTENDENT WANTS MORE CARPENTERS, MR. ST. DENIS SEEKS OUT AND CHOOSES THE CARPENTERS HE WANTS TO WORK ON THE JOB. FURTHER, THE HIRING OF THE CARPENTERS IS DONE BY THE SUPERINTENDENT AFTER THE LATTER SPEAKS TO PROSPECTIVE EMPLOYEES. MR. ST. DENIS TESTIFIED THAT HE REGARDED HIMSELF AS A WORKING CARPENTER FOREMAN WHO WORKS WITH HIS CREW AND THAT HE HAS HIS CARPENTERS' TOOLS ON THE JOB. MR. ST. DENIS INFORMED THE BOARD THAT HE DOES NOT GIVE DIRECTIONS TO OTHER MEMBERS ON THE JOB AND THAT IT WOULD BE THE SUPERINTENDENT WHO WOULD DECIDE IF ANY OVERTIME WAS TO BE WORKED. MR. ST. DENIS KEEPS THE TIME-SHEETS OF THE CARPENTERS ON THE JOB AND GIVES THEM TO THE SUPERINTENDENT WHO SIGNS THEM.

8. MR. ARTHUR CARRIERE WAS CALLED AS A WITNESS BY THE APPLICANT. HE GAVE EVIDENCE THAT IT WAS MR. ST. DENIS WHO TELEPHONED HIM AT HOME AND TOLD HIM THAT HE WANTED HIM TO COME AND WORK FOR THE RESPONDENT. HE GAVE EVIDENCE THAT MR. ST. DENIS DOES MOST OF THE BLUE PRINT READING AND SOMETIMES CHECKS HIS WORK. HE GAVE EVIDENCE THAT THE OTHER TRADES GO TO ST. DENIS FOR INFORMATION. MR. CARRIERE ALSO STATED THAT MR. ST. DENIS DOES NOT DISCIPLINE HIS FELLOW WORKERS AND THAT EXCEPT FOR THE LEVEL AND LINE WORK PERFORMED BY MR. ST. DENIS HE DOES NOT DO MUCH CARPENTRY WORK. HOWEVER, MR. CARRIERE STATED THAT HE DOES NOT GET A CHANCE TO OBSERVE MR. ST. DENIS CLOSELY. THE WITNESS

HAS HOWEVER OBSERVED MR. ST. DENIS GIVING ORDERS TO LABOURERS. WHEN ASKED WHO INSTRUCTS THE FOREMEN OF THE OTHER TRADES ON THE JOB, THE WITNESS STATED THAT IT WOULD BE THE SUPERINTENDENT.

9. THE APPLICANT ALSO CALLED AS A WITNESS MR. JEAN-LOUIS CLEMENT. THE WITNESS TESTIFIED THAT MR. ST. DENIS IS RESPONSIBLE FOR THE RESPONDENT'S EMPLOYEES AND FOR THE TRADES ON THE JOB. HE INFORMED THE BOARD THAT MR. ST. DENIS WAS A WORKING FOREMAN WHO WORKED WITH HIS TOOLS ABOUT SEVENTY-FIVE PER CENT OF THE TIME. MR. CLEMENT GAVE EVIDENCE THAT DURING THIS PERIOD MR. ST. DENIS WOULD BE DOING LAY-OUT WORK USING MAINLY LEVELS, LINES, PLUMB-BOBS AND BLUE PRINTS.

10. MR. MISMAS GAVE EVIDENCE THAT MR. ST. DENIS HAS TO CONSULT HIM IN ALL STAGES OF THE WORK AND THAT MR. ST. DENIS IS PARTLY IN CHARGE OF THE CARPENTERS AND GIVES THEM DIRECTIONS ON THE JOB. THE WITNESS INFORMED THE BOARD THAT MR. ST. DENIS HAS NO SUPERVISORY POWER BUT THAT ON INFREQUENT OCCASIONS, GIVES DIRECTIONS TO THE LABOURERS IF THE LABOURERS' FOREMAN IS NOT AVAILABLE. HE ADDED, HOWEVER, THAT IF THE FOREMAN OF THE LABOURERS IS AVAILABLE, MR. ST. DENIS WOULD REFER THE LABOURERS TO THE LABOURERS' FOREMAN. WHILE THE SUB-CONTRACTORS MAY WELL CONSULT MR. ST. DENIS FROM TIME TO TIME, THEY WOULD HAVE TO GO TO MR. MISMAS FOR DIRECTIONS. MR. MISMAS TESTIFIED THAT MR. ST. DENIS HAS NO CONTACT WITH THE OWNER OR THE ENGINEER FOR THE PROJECT. THE WITNESS REVIEWS BLUE PRINTS WITH MR. ST. DENIS AND GIVES HIM INSTRUCTIONS ON WHAT TO DO. IT IS MR. DENIS' JOB TO ALLOCATE AND DISTRIBUTE WORK TO THE CARPENTERS IN HIS CARE.

11. MR. ST. DENIS' FUNCTIONS OF PERFORMING LAY-OUT WORK, WORKING WITH THE TOOLS OF HIS TRADE AND GIVING INSTRUCTIONS AND DIRECTIONS TO HIS CREW OF CARPENTERS ARE ESSENTIALLY THOSE OF A WORKING FOREMAN IN THE CONSTRUCTION INDUSTRY AND WHO IS NORMALLY INCLUDED IN A BARGAINING UNIT OF CARPENTERS AND CARPENTERS' APPRENTICES DETERMINED BY THE BOARD. HIS ROLE IN THE HIRING PROCESS IS ESSENTIALLY THAT OF A CONDUIT FOR THE SUPERINTENDENT. EXPRESSED IN ANOTHER WAY, MR. ST. DENIS SCOUTS AROUND FOR MEN WHO ARE, IN HIS OPINION, GOOD CARPENTERS AND THEN RECOMMENDS THESE NAMES TO MR. MISMAS. IT IS CLEAR, HOWEVER, THAT THE FORMER DOES NOT COMMENCE HIS SCOUTING ACTIVITIES UNTIL HE IS ACTIVATED BY A REQUEST FROM MR. MISMAS. MR. ST. DENIS HAS NO POWER TO GRANT TIME OFF, WOULD NOT DISCIPLINE AN EMPLOYEE IF HIS WORK IS NOT BEING PROPERLY PERFORMED, HAS NO POWER TO RECOMMEND A WAGE INCREASE AND HAS NO POWER TO ORDER OVERTIME. MR. ST. DENIS DOES GIVE ORDERS TO LABOURERS. HOWEVER, THIS LATTER SITUATION ARISES ONLY WHEN THE FOREMAN FOR THE LABOURERS IS NOT AT HAND. THIS DUTY, HOWEVER, IS A MINOR PART OF HIS DUTIES AND IS CLEARLY INCIDENTAL TO HIS FUNCTION AS A WORKING FOREMAN. WHILE MR. ST. DENIS MAY GIVE INFORMATION TO THE OTHER TRADES ON THE JOB, IT IS CLEAR THAT HE HAS NO POWER TO GIVE THEM DIRECTIONS (AS OPPOSED TO INFORMATION). IT IS QUITE CLEAR THAT

THE DIRECTIONS TO THE OTHER TRADES ARE GIVEN BY THE SUPERINTENDENT, MR. MISMAS. THE KEEPING OF THE TIME-SHEETS ON THE JOB BY MR. ST. DENIS APPEARS, ON THE EVIDENCE BEFORE THE BOARD, TO BE ESSENTIALLY A MINOR CLERICAL OPERATION.

12. MR. CLEMENT GAVE HIS EVIDENCE THROUGH AN INTERPRETER. HOWEVER, IT WAS QUITE CLEAR THAT THERE WAS A PROBLEM IN COMMUNICATING WITH THIS WITNESS AND THAT THIS WAS REFLECTED IN HIS ANSWERS. THIS IS NOT INDICATED AS A CRITICISM OF THIS WITNESS BUT IT DOES LEAD THE BOARD TO VIEW HIS EVIDENCE WITH QUALIFICATION. IN OUR VIEW, MR. ST. DENIS, MR. CARRIERE AND MR. MISMAS MORE CORRECTLY OBSERVED AND DESCRIBED THE RESPONSIBILITIES AND DUTIES OF MR. ST. DENIS AND WE HAVE NO HESITATION IN ACCEPTING THEIR EVIDENCE ON THESE POINTS.

13. HAVING REGARD TO THE FOREGOING, THE BOARD FINDS THAT ROGER ST. DENIS IS A WORKING FOREMAN AND DOES NOT EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT.

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18. THE MATTER IS REFERRED TO THE REGISTRAR.

1504-71-R: WAREHOUSEMEN AND MISCELLANEOUS DRIVERS UNION, LOCAL 419 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. AJAX AND PICKERING GENERAL HOSPITAL (RESPONDENT) V. CANADIAN UNION OF PUBLIC EMPLOYEES (INTERVENER #1) V. NURSES' ASSOCIATION AJAX AND PICKERING GENERAL HOSPITAL (INTERVENER #2).

BEFORE: O.B. SHIME, VICE-CHAIRMAN, AND BOARD MEMBERS O. HODGES AND H.F. IRWIN.

APPEARANCES AT THE HEARING: W.W. TILLER FOR THE APPLICANT; C. E. WILSON AND D. ALAN PAGE FOR THE RESPONDENT; W.A. ACTON FOR INTERVENER #1; NO ONE APPEARING FOR INTERVENER #2.

DECISION OF BOARD MEMBERS H.F. IRWIN AND O. HODGES: MAY 16, 1972.

1. THIS IS AN APPLICATION FOR CERTIFICATION BY WAREHOUSEMEN AND MISCELLANEOUS DRIVERS UNION, LOCAL 419 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (HEREINAFTER REFERRED TO AS "THE TEAMSTERS") TO BE CERTIFIED AS BARGAINING AGENT FOR ALL EMPLOYEES CLASSED AS CASUALTY CARE TECHNICIANS, DISPATCHERS AND SENIOR ATTENDANTS CONNECTED WITH THE AMBULANCE SERVICE OF THE AJAX AND PICKERING HOSPITAL AT PICKERING SAVE

AND EXCEPT SUPERVISORS OF AMBULANCE SERVICE AND THOSE ABOVE THE RANK OF SUPERVISOR.

2. THE AJAX AND PICKERING GENERAL HOSPITAL, THE RESPONDENT, IS PARTY TO A COLLECTIVE AGREEMENT WITH INTERVENER #1, CANADIAN UNION OF PUBLIC EMPLOYEES (HEREINAFTER REFERRED TO AS "CUPE") WHICH COMMENCED TO OPERATE ON APRIL 1ST, 1970 AND REMAINS IN EFFECT UNTIL MARCH 31, 1972.

3. IN CLEAR UNAMBIGUOUS LANGUAGE ARTICLE 2, PARAGRAPH 2.01 OF THE AGREEMENT STATES THAT CUPE IS BARGAINING AGENT FOR ALL THE EMPLOYEES OF THE HOSPITAL AT AJAX WITH CERTAIN EXCEPTIONS NOT HERE RELEVANT. CONSEQUENTLY, AS THE EMPLOYEES CLASSED AS CASUALTY CARE TECHNICIANS, DISPATCHERS AND SENIOR ATTENDANTS ARE NOT ONE OF THE SPECIFIED EXCLUSIONS UNDER ARTICLE 2, PARAGRAPH 2.01 OF THE AGREEMENT, WE FIND THAT THEY WERE AUTOMATICALLY INCLUDED IN THE ALL EMPLOYEE BARGAINING UNIT WHEN THEY COMMENCED TO WORK FOR THE HOSPITAL ON OR ABOUT MARCH 1ST, 1971.

4. THIS APPLICATION WAS MADE ON JANUARY 25, 1972 UNDER SECTION 5, SUBSECTION (4) OF THE LABOUR RELATIONS ACT WHICH STATES THAT WHERE A COLLECTIVE AGREEMENT IS FOR A TERM OF NOT MORE THAN THREE YEARS, A TRADE UNION MAY, SUBJECT TO SECTION 53 WHICH IS NOT HERE RELEVANT, APPLY TO THE BOARD FOR CERTIFICATION AS BARGAINING AGENT OF ANY OF THE EMPLOYEES IN THE BARGAINING UNIT DEFINED IN THE AGREEMENT ONLY AFTER THE COMMENCEMENT OF THE LAST TWO MONTHS OF ITS OPERATION. AS JANUARY 25, 1972 IS CLEARLY NOT AFTER THE COMMENCEMENT OF THE LAST TWO MONTHS OF THE OPERATION OF THE COLLECTIVE AGREEMENT BETWEEN CUPE AND THE RESPONDENT HOSPITAL, THE APPLICATION BY THE TEAMSTERS IS UNTIMELY AND MUST BE DISMISSED AS THE BOARD HAS NO JURISDICTION TO ENTERTAIN IT.

DECISION OF O.B. SHIME, VICE-CHAIRMAN: MAY 16, 1972.

1. IN THIS CASE THE APPLICANT SEEKS TO BE CERTIFIED FOR A BARGAINING UNIT COMPOSED OF "ALL AMBULANCE ATTENDANTS, AND DISPATCHERS" WITH CERTAIN EXCEPTIONS THAT ARE NOT HERE MATERIAL. THE RESPONDENT EMPLOYER AND THE CANADIAN UNION OF PUBLIC EMPLOYEES (HEREINAFTER REFERRED TO AS CUPE), OPPOSE THE APPLICATION ON THE BASIS THAT THE PERSONS CLAIMED ARE COVERED BY A COLLECTIVE AGREEMENT BETWEEN CUPE AND THE EMPLOYER.

2. THE ISSUE CONFRONTING THE BOARD IS WHETHER THE EMPLOYEES COMPRISE AN APPROPRIATE TAG-END UNIT OR WHETHER THEY ARE AN ACCRETION TO THE EXISTING BARGAINING UNIT REPRESENTED BY CUPE. IT APPEARS THAT CUPE WAS CERTIFIED IN 1964 FOR A BARGAINING UNIT OF EMPLOYEES DESCRIBED AS "ALL EMPLOYEES OF THE (AJAX AND PICKERING GENERAL HOSPITAL) AT ITS HOSPITAL AT AJAX..." WITH CERTAIN EXCEPTIONS THAT ARE NOT HERE

MATERIAL. THAT DESCRIPTION WAS CARRIED THROUGH SUCCESSIVE AGREEMENTS BETWEEN THE RESPONDENT EMPLOYER AND CUPE WITH THE LAST AGREEMENT COMMENCING APRIL 1, 1970 AND CONTINUING IN EFFECT UNTIL MARCH 31, 1972.

3. IN MARCH OF 1971 THE HOSPITAL ADDED TO ITS EXISTING SERVICES AN AMBULANCE DIVISION WHICH PRESENTLY COMPRISES APPROXIMATELY TWENTY-TWO PERSONS. THE "AMBULANCE EMPLOYEES" WERE GIVEN THE BENEFITS PROVIDED IN THE COLLECTIVE AGREEMENT WITH CUPE AND THERE ALLEGEDLY WAS A TACIT UNDERSTANDING BETWEEN THE EMPLOYER AND CUPE THAT THE AMBULANCE DIVISION WOULD BE SPECIFICALLY INCLUDED IN THE BARGAINING UNIT ON THE RENEWAL OF THE COLLECTIVE AGREEMENT.

4. IT IS SUBMITTED BY THE APPLICANT THAT THE AMBULANCE DIVISION FORMS A "TAG-END UNIT" CAPABLE OF FORMING AN APPROPRIATE BARGAINING UNIT. CUPE AND THE RESPONDENT EMPLOYER, HOWEVER, CLAIM THAT THE AMBULANCE DIVISION FORMS AN ACCRETION TO THE BARGAINING UNIT UNDER THE EXISTING COLLECTIVE AGREEMENT AND SPECIFICALLY THAT THE AMBULANCE DIVISION IS ENCOMPASSED BY THE PHRASE "ALL EMPLOYEES OF THE AJAX AND PICKERING GENERAL HOSPITAL" WHICH IS CONTAINED IN THE COLLECTIVE AGREEMENT.

5. IN OUR VIEW THE GRANTING OF CERTIFICATION TO AN "ALL EMPLOYEE BARGAINING UNIT" MANIFESTS AN INTENT TO CREATE A COMPREHENSIVE BARGAINING UNIT COMPRISING MANY DIFFERENT CLASSIFICATIONS OF EMPLOYEES. WE HAVE INDICATED A PREFERENCE FOR SUCH A UNIT AS BETTER SERVING BOTH EMPLOYERS AND EMPLOYEES BY AVOIDING JURISDICTIONAL DISPUTES, ENABLING BROAD POLICY DECISIONS AND CREATING MOBILITY FOR EMPLOYEES. WE RECOGNIZE, OF COURSE, THAT THE VARIOUS BUSINESS CONDITIONS MAY CREATE FLUCTUATIONS IN THE BARGAINING UNIT. A BARGAINING UNIT IS NOT FIXED AND IMMUTABLE; THERE WILL BE DIMINUTIONS IN THE UNIT AS WELL AS ACCRETIONS TO THE UNIT. THUS, IF THERE ARE ADDITIONAL EMPLOYEES OR NEW CLASSIFICATIONS OR EVEN NEW DIVISIONS WITHIN THE GEOGRAPHIC AREA DESCRIBED IN THE BARGAINING UNIT PERSONS INVOLVED WILL NORMALLY FALL INTO THE EXISTING BARGAINING UNIT. THIS IS PARTICULARLY SO IN THE CASE OF AN "ALL EMPLOYEE" UNIT BECAUSE IN THAT SITUATION THERE IS A PRESUMPTION THAT THE COMPREHENSIVE NATURE OF THE BARGAINING UNIT IS TO BE PRESERVED.

6. THAT IS NOT TO SAY THAT IN CERTAIN CIRCUMSTANCES AN EXPANSION OF THE EXISTING WORK FORCE MIGHT NOT LEAD TO A SEPARATE AND APPROPRIATE BARGAINING UNIT. THUS, WHERE THERE IS AN EXPANSION AND THE PARTIES TO THE COLLECTIVE AGREEMENT DO NOT BRING THE PERSONS INVOLVED UNDER THE PROVISIONS OF A COLLECTIVE AGREEMENT UNDER CERTAIN CIRCUMSTANCES, THEY MAY BE TAKEN TO HAVE ABANDONED THE ADDED GROUP. PARTIES WHO ARE NOT QUICK TO EXTEND COLLECTIVE BARGAINING TO AN ADDED COMPLEMENT OF EMPLOYEES DO SO AT THE PERIL OF HAVING A DETERMINATION MADE THAT THE GROUP LEFT IN THE SHADOWS OF A COLLECTIVE AGREEMENT WITHOUT THE BENEFIT OF COLLECTIVE BARGAINING HAS BEEN ABANDONED.

7. A TAG-END BARGAINING UNIT DIFFERS FROM OTHER BARGAINING UNITS IN THAT IT IS COMPOSED OF EMPLOYEE REMNANTS NOT COVERED BY A CERTIFICATE OR A COLLECTIVE AGREEMENT EITHER BECAUSE OF THEIR SPECIFIC EXCLUSION OR BECAUSE IT CAN REASONABLY BE ASCERTAINED THAT THEY HAVE BEEN EXCLUDED FROM THE EXISTING COLLECTIVE BARGAINING AGREEMENT. IF A TRADE UNION HAD APPLIED TO REPRESENT THESE PERSONS AT A TIME WHEN THERE WAS NO EXISTING CERTIFICATE OR COLLECTIVE AGREEMENT THIS REMNANT GROUP OF EMPLOYEES WOULD NOT FORM AN APPROPRIATE BARGAINING UNIT. HOWEVER, WHERE THERE ARE EXISTING COLLECTIVE BARGAINING SITUATIONS AND THE REMNANT GROUP IS NOT APPROPRIATE IN ITSELF ACCORDING TO THE USUAL CRITERIA, THE BOARD IN ORDER TO EXTEND COLLECTIVE BARGAINING TO THIS REMNANT GROUP HAS FOUND IT TO BE AN APPROPRIATE BARGAINING UNIT AND REFERS TO IT AS A "TAG-END UNIT".

8. THERE ARE SIMILARITIES BETWEEN THE SITUATIONS GIVING RISE TO AN ACCRETION TO THE BARGAINING UNIT AND SITUATIONS GIVING RISE TO A TAG-END UNIT. IN BOTH SITUATIONS THERE IS AN EXISTING COLLECTIVE BARGAINING RELATIONSHIP AND THERE IS ALSO A GROUP OF EMPLOYEES WHO ARE NOT COVERED BY THAT RELATIONSHIP. IN THE ACCRETION SITUATIONS THE EMPLOYEES NOT COVERED WILL GENERALLY HAVE ARRIVED ON THE SCENE SUBSEQUENT TO THE ENTERING INTO OF THE COLLECTIVE AGREEMENT OR THE GRANTING OF A CERTIFICATE. IN THE TAG-END SITUATIONS THE EMPLOYEES OR THEIR CLASSIFICATIONS WILL GENERALLY HAVE BEEN ON THE SCENE AT THE TIME OF THE ENTERING INTO OF THE COLLECTIVE AGREEMENT OR THE GRANTING OF THE CERTIFICATE. THERE ARE MANY SITUATIONS THAT MAY BE RESOLVED BY ASKING WHEN THE NON-COVERED OR REMNANT GROUP ARRIVED ON THE SCENE IN RELATION TO THE FORMATION OF THE BARGAINING UNIT DESCRIPTION EITHER IN THE CERTIFICATE OR THE COLLECTIVE AGREEMENT.

9. THAT TEST DOES NOT COVER ALL SITUATIONS. FOR EXAMPLE, CERTAIN EMPLOYEES MAY NOT BE COVERED BY THE DESCRIPTION IN THE BARGAINING UNIT NOTWITHSTANDING THAT THEY WERE PRESENT AT THE TIME OF THE FORMATION OF THE DESCRIPTION BECAUSE THEY FORM AN APPROPRIATE BARGAINING UNIT IN THEMSELVES. AGAIN, EMPLOYEES PRESENT AT THE TIME OF THE DESCRIPTION MAY HAVE BEEN ABANDONED. IN CERTAIN OTHER CASES BARGAINING UNITS ARE DESCRIBED IN TERMS OF SPECIFIC CLASSIFICATIONS AND EMPLOYEES NOT WITHIN THOSE CLASSIFICATIONS BUT PRESENT AT THE TIME OF THE FORMATION OF THE BARGAINING UNIT DESCRIPTION WOULD NOT BE INCLUDED IN THE BARGAINING UNIT BECAUSE OF THE MANNER IN WHICH THE UNIT IS DESCRIBED.

10. IF WE APPLY THESE CONSIDERATIONS TO THE INSTANT CASE IT IS APPARENT THAT THE AMBULANCE DIVISION COMPRISES PERSONS WHO WERE ADDED TO THE HOSPITAL STAFF AFTER THE FORMATION OF AN "ALL EMPLOYEE" BARGAINING UNIT DESCRIPTION. THESE EMPLOYEES HAVE NOT BEEN ABANDONED AND ACCORDINGLY THE AMBULANCE DIVISION FALLS WITHIN THE "ALL EMPLOYEE" BARGAINING UNIT DESCRIBED IN THE COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT EMPLOYER AND CUPE.

11. SINCE THIS APPLICATION WAS NOT MADE AFTER THE COMMENCEMENT OF THE LAST TWO MONTHS OF OPERATION OF THE COLLECTIVE AGREEMENT BETWEEN CUPE AND THE RESPONDENT EMPLOYER THIS APPLICATION IS UNTIMELY PURSUANT TO SECTION 5(4) OF THE LABOUR RELATIONS ACT.

12. THE APPLICATION IS DISMISSED.

1837-72-M: G. M. NELSON WELDING (EMPLOYER) V. INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL 786 (TRADE UNION).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS H. ADE AND E. BOYER.

APPEARANCES AT THE HEARING: L. J. VALIN, Q.C., AND G. M. NELSON FOR THE EMPLOYER; J. TYE FOR THE TRADE UNION.

DECISION OF THE BOARD: MAY 17, 1972.

1. THIS IS A REFERENCE FROM THE MINISTER UNDER SECTION 96 OF THE LABOUR RELATIONS ACT.

2. THE EMPLOYER AND TRADE UNION WERE PARTIES TO A COLLECTIVE AGREEMENT COVERING IRONWORKERS IN THE EMPLOY OF THE EMPLOYER IN THE JUDICIAL DISTRICTS OF ALGOMA, MANITOULIN, NIPISSING, PARRY SOUND, SUDBURY, TEMISKAMING AND ALL OF THE DISTRICT OF COCHRANE SOUTH OF THE 50TH DEGREE LATITUDE.

3. ARTICLE 25 OF THE SAID COLLECTIVE AGREEMENT TITLED "DURATION AND TERMINATION OF AGREEMENT" READS:

THIS AGREEMENT WILL BECOME EFFECTIVE ON MAY 1, 1969, AND WILL REMAIN IN FORCE AND EFFECT UNTIL APRIL 30, 1971, AND FROM YEAR TO YEAR THEREAFTER UNLESS WRITTEN NOTICE TO TERMINATE OR MODIFY THE AGREEMENT IS FILED BY EITHER PARTY NOT MORE THAN NINETY (90) AND NOT LESS THAN SIXTY (60) DAYS PRIOR TO THE EXPIRATION OF ANY SUCH PERIOD. IN THE EVENT THAT SUCH WRITTEN NOTICE IS GIVEN NEGOTIATIONS WILL COMMENCE WITHIN FIVE DAYS AFTER RECEIPT OF SUCH NOTICE. DURING THE PERIOD OF SUCH NEGOTIATIONS THIS AGREEMENT SHALL REMAIN IN FULL FORCE AND EFFECT.

4. THERE WAS FILED WITH THE BOARD A COPY OF A LETTER DATED

FEBRUARY 2, 1971 WHICH WAS IDENTIFIED BY JAMES TYE, THE BUSINESS MANAGER OF THE TRADE UNION. TYE TESTIFIED THAT HE SENT THE SAID LETTER TO THE EMPLOYER TO THE ATTENTION OF THE GENERAL MANAGER. THE BODY OF THE LETTER READS:

PLEASE BE ADVISED IN ACCORDANCE WITH ARTICLE 25 OF THE COLLECTIVE AGREEMENT BETWEEN THE EMPLOYER AND THE UNION, THAT LOCAL 786 OF THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS WISH TO AMEND THE COLLECTIVE AGREEMENT.

PLEASE ADVISE OF MEETING DATE SATISFACTORY TO YOU.

5. GEORGE NELSON, THE OWNER OF G. M. NELSON WELDING, TESTIFIED THAT HE DID NOT RECEIVE THE ABOVE LETTER FROM TYE. THE LETTER WAS CORRECTLY ADDRESSED TO THE PREMISES OF THE EMPLOYER AND TYE FILED AND IDENTIFIED A COPY OF A REGISTRATION RECEIPT FROM THE POST OFFICE FOR THE SAID LETTER WHICH BEARS THE DATE FEBRUARY 3, 1971. HAVING REGARD TO THE FACT THAT THE TRADE UNION HAS SATISFIED THE BOARD THAT NOTICE TO AMEND THE COLLECTIVE AGREEMENT WAS SENT TO THE EMPLOYER BY REGISTERED MAIL AND THE PROVISIONS OF SECTION 102 OF THE ACT, THE BOARD FINDS THAT PROPER NOTICE IN WRITING WAS GIVEN BY THE TRADE UNION TO THE EMPLOYER OF ITS DESIRE TO BARGAIN WITH A VIEW TO THE RENEWAL OF THE SAID COLLECTIVE AGREEMENT WITHIN THE MEANING OF SECTION 45 OF THE ACT AND AS REQUIRED BY ARTICLE 25 OF THE COLLECTIVE AGREEMENT.

6. FOLLOWING THE GIVING OF NOTICE TO BARGAIN NO MEETINGS WERE HELD BETWEEN THE TRADE UNION AND THE EMPLOYER PRIOR TO THE TRADE UNION REQUESTING THE MINISTER TO APPOINT A CONCILIATION OFFICER BY AN APPLICATION DATED MARCH 2, 1972. BASED ON THE EVIDENCE AND REPRESENTATIONS OF THE PARTIES, WE ARE SATISFIED THAT THE TRADE UNION HAS NOT ABANDONED THE BARGAINING RIGHTS WHICH IT HELD BY VIRTUE OF ITS COLLECTIVE AGREEMENT WITH THE EMPLOYER WHICH EXPIRED ON APRIL 30, 1971.

7. SECTION 15(1) OF THE ACT READS:

WHERE NOTICE HAS BEEN GIVEN UNDER SECTION 13 OR 45, THE MINISTER, UPON THE REQUEST OF EITHER PARTY, SHALL APPOINT A CONCILIATION OFFICER TO CONFER WITH THE PARTIES AND ENDEAVOUR TO EFFECT A COLLECTIVE AGREEMENT.

NOTICE HAVING BEEN GIVEN BY THE TRADE UNION TO THE EMPLOYER UNDER SECTION 45, BY THE PROVISIONS OF SUBSECTION (1) OF SECTION 15 THE MINISTER IS REQUIRED TO APPOINT A CONCILIATION OFFICER.

8. ACCORDINGLY, OUR ANSWER TO THE QUESTION REFERRED TO THE BOARD IS THAT THE MINISTER HAS THE AUTHORITY UNDER THE LABOUR RELATIONS ACT TO APPOINT A CONCILIATION OFFICER.

51-70-R: TEXTILE WORKERS UNION OF AMERICA, AFL-CIO-CLC (APPLICANT) V. FEDERAL PACKAGING AND PARTITION COMPANY LIMITED (RESPONDENT) V. FEDERAL PACKAGING EMPLOYEES ASSOCIATION (INTERVENER) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS P. J. O'KEEFE AND J.E.C. ROBINSON, Q.C.

DECISION OF J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBER P. J. O'KEEFE.
MAY 17, 1972.

1. BY LETTER DATED APRIL 28, 1972 COUNSEL FOR THE RESPONDENT HAS REQUESTED THAT THE BOARD RECONSIDER ITS DECISION OF APRIL 14, 1972 IN THIS MATTER.

2. THE SAID LETTER OF COUNSEL FOR THE RESPONDENT READS IN PART AT PAGE 3 AS FOLLOWS:

IT IS SUBMITTED THAT EACH OF THE EMPLOYEES WHO GAVE EVIDENCE BEFORE THE BOARD, EDDIE MATHEWS JUDY HATCHI AND LINDA HOLTER, GAVE EVIDENCE TO THE EFFECT THAT THEY DID NOT REGARD EITHER OF ANNIE JOHNSTON OR GLADYS DALE AS BEING MEMBERS OF MANAGEMENT; THAT THEIR OPINIONS WITH RESPECT TO THE SIGNING OF THE ANTI-UNION PETITION WERE IN NO WAY EFFECTED BY THE PRESENCE OF THESE PEOPLE AT THE MEETING AND THAT IN ANY EVENT THEY REGARDED THEM AS MEMBERS OF THE BARGAINING UNIT. FURTHER, COUNSEL FOR THE TEXTILE WORKERS UNION, MR. ARMSTRONG, UNDERTOOK BEFORE THE BOARD THAT HE CONCEDED THAT NEITHER OF THE TWO FORELADIES CONSIDERED THEMSELVES TO BE MEMBERS OF MANAGEMENT AND THAT MANAGEMENT DID NOT CONSIDER THEM TO BE MEMBERS OF MANAGEMENT AND FURTHER THAT THE EMPLOYEES THEMSELVES DID NOT CONSIDER THEM TO BE MEMBERS OF MANAGEMENT. IT IS THEREFORE THE RESPONDENT'S POSITION THAT THE BOARD HAS EITHER FAILED OR INADVERTENTLY OVERLOOKED A PORTION OF THE EVIDENCE CRUCIAL TO ITS DETERMINATION IN THIS CASE AND THAT IN SO-DOING IT HAS CREATED A GRAVE INDUSTRIAL RELATIONS PROBLEM FOR THE RESPONDENT COMPANY, THE APPLICANT UNION, THE INTERVENING UNION AND THE PETITIONING EMPLOYEES.

3. WE WOULD FIRST POINT OUT THAT THE PARTIES AGREED UPON THE STATEMENT OF FACTS SET OUT IN PARAGRAPH 2 OF THE DECISION OF THE MAJORITY DATED APRIL 14, 1972 IN LIEU OF COUNSEL FOR THE APPLICANT CALLING VIVA VOCE EVIDENCE IN SUPPORT OF CHARGES WITH RESPECT TO THE STATUS OF THE INTERVENER CONTAINED IN A LETTER FROM COUNSEL FOR THE APPLICANT DATED MARCH 9, 1971. AT THE TIME THE PARTIES AGREED UPON THE REFERRED TO STATEMENT OF FACTS THEY FURTHER AGREED THAT THE BOARD SHOULD DISREGARD THE EVIDENCE OF EDWARD MATHEWS WHO HAD ALREADY BEEN CALLED AS A WITNESS BY COUNSEL FOR THE APPLICANT.

4. WE WOULD FURTHER POINT OUT THAT COUNSEL FOR THE APPLICANT NEITHER UNDERTOOK NOR CONCEDED THAT THE EMPLOYEES THEMSELVES DID NOT CONSIDER ANNE JOHNSTON OR GLADYS DALE TO BE MEMBERS OF MANAGEMENT. THE FACTS WHICH THE PARTIES AGREED TO, AS HAS ALREADY BEEN STATED, ARE SET OUT IN PARAGRAPH 2 OF THE BOARD'S DECISION OF APRIL 14, 1972. ITEM 5 OF THAT PARAGRAPH READS:

THE PLANT MANAGER MR. BARRETT DID NOT REGARD ANNE JOHNSTON OR GLADYS DALE AS BEING MEMBERS OF MANAGEMENT AND NEITHER ANNE JOHNSTON NOR GLADYS DALE REGARDED THEMSELVES AS BEING MEMBERS OF MANAGEMENT.

5. THE FINDING OF THE MAJORITY AS TO THE MANNER IN WHICH THE EMPLOYEES OF THE RESPONDENT WOULD LOOK UPON THE TWO FORELADIES MRS. JOHNSTON AND MRS. DALE IS SET OUT IN PARAGRAPH 11 OF THE DECISION OF THE MAJORITY DATED APRIL 14, 1972 AND PARAGRAPH 8 OF THE ADDENDUM TO THE DECISION OF THE MAJORITY DATED APRIL 14, 1972.

6. THE BOARD REJECTS THE SUBMISSION OF COUNSEL FOR THE RESPONDENT THAT IT EITHER "FAILED OR INADVERTENTLY OVERLOOKED A PORTION OF THE EVIDENCE CRUCIAL TO ITS DETERMINATION IN THIS CASE." THE BOARD IN FACT CAREFULLY CONSIDERED ALL THE EVIDENCE IN MAKING ITS FINDINGS IN THE INSTANT CASE.

7. COUNSEL FOR THE RESPONDENT HAS NOT ADVANCED ANY ARGUMENTS IN HIS LETTER OF APRIL 28, 1972 WHICH WERE NOT MADE OR COULD NOT HAVE BEEN MADE AT THE HEARINGS IN THIS APPLICATION NOR HAS HE RAISED ANY MATTERS RELATING TO THE MERITS OF THE CASE WHICH WERE NOT DEALT WITH BY THE BOARD EITHER IN ITS DECISION OF JULY 30, 1971 OR APRIL 14, 1972. BASED ON THE EVIDENCE BEFORE THE BOARD AND THE SUBMISSIONS OF COUNSEL AS CONTAINED IN HIS LETTER, THE BOARD THEREFORE SEES NO REASON TO VARY OR REVOKE ITS DECISION OF APRIL 14, 1972.

8. THE REQUEST OF COUNSEL FOR THE RESPONDENT ACCORDINGLY IS DENIED.

9. WE WOULD MENTION THAT COUNSEL FOR THE RESPONDENT IN HIS LETTER OF APRIL 28, 1972 STATES THAT THE RESPONDENT AND THE INTERVENER

COMMENCED NEGOTIATIONS FOR THE RENEWAL OF THE AGREEMENT DATED FEBRUARY 28, 1970 AND THAT HE REQUESTED THE MINISTER TO APPOINT A CONCILIATION OFFICER AND THAT THE MINISTER IN FACT DID APPOINT A CONCILIATION OFFICER WHO HELD ONE MEETING WITH THE PARTIES PRIOR TO THE BOARD ISSUING ITS DECISION OF APRIL 14, 1972. WE WOULD SIMPLY POINT OUT THAT THE STATUS OF THE INTERVENER AND THE AGREEMENT OF FEBRUARY 28, 1970 WERE MATTERS WHICH THE BOARD WAS CALLED UPON TO MAKE DETERMINATIONS IN THE INSTANT APPLICATION AND THAT COUNSEL FOR THE RESPONDENT WAS AWARE OF THIS AT THE TIME HE REQUESTED THE MINISTER TO APPOINT A CONCILIATION OFFICER. THE APPOINTMENT OF A CONCILIATION OFFICER, WE WOULD ADD, IS NOT A MATTER FALLING WITHIN THE PURVIEW OF THE BOARD'S JURISDICTION.

DECISION OF BOARD MEMBER J.E.C. ROBINSON, Q.C.: MAY 17, 1972.

HAVING EXHAUSTIVELY DEALT WITH ALL FACETS OF THE MATTER IN MY DECISION OF APRIL 14, 1972, IT IS NOT MY INTENTION TO HERE COMMENT ON THE REQUEST FOR RECONSIDERATION.

1849-72-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL UNION 249 KINGSTON ONTARIO (APPLICANT) V. J. G. FITZPATRICK CONSTRUCTION LTD. (RESPONDENT).

BEFORE: R. A. FURNESS, VICE-CHAIRMAN AND BOARD MEMBERS E. BOYER AND J. E. C. ROBINSON, Q.C.

APPEARANCES AT THE HEARING: ANGUS FROATS AND L. A. MACLEAN FOR THE APPLICANT; F. R. VON VEH, MICHAEL H. STANFORTH AND J. C. DAVIS FOR THE RESPONDENT.

DECISION OF VICE-CHAIRMAN, R. A. FURNESS AND BOARD MEMBER J. E. C. ROBINSON, Q.C.: MAY 18, 1972.

. . .

4. WE FURTHER FIND THAT THIS IS AN APPLICATION FOR CERTIFICATION WITHIN THE MEANING OF SECTION 108 OF THE LABOUR RELATIONS ACT.

. . .

6. IN PARAGRAPH 13 OF ITS REPLY THE RESPONDENT STATED:

"THE RESPONDENT HEREIN SUBMITS THAT THE INSTANT APPLICATION FOR CERTIFICATION IS PREMATURE AND UNTIMELY HAVING REGARD TO THE FACT THAT AT THE TIME THE APPLICATION WAS MADE THERE WERE ONLY 4 EMPLOYEES WHO WOULD FALL UNDER THE AMBIT OF

THE APPROPRIATE BARGAINING UNIT. AT THE PRESENT TIME, (21ST APRIL) THERE ARE 13 EMPLOYEES WHO WOULD FALL UNDER THE SAID AMBIT AND THE ANTICIPATED TOTAL NUMBER OF EMPLOYEES THAT WOULD FALL UNDER THE SAID AMBIT IS EXPECTED TO BE APPROXIMATELY 120, THIS NUMBER BEING REACHED AT OR ABOUT JUNE 15TH, 1972. IT MUST BE POINTED OUT THAT THE OVERALL TOTAL NUMBER OF EMPLOYEES THAT WILL BE EMPLOYED AT THE JOB SITE REFERRED TO IN PARAGRAPH 5 IS ANTICIPATED TO BE APPROXIMATELY 300. HAVING REGARD TO THE AFOREMENTIONED STATEMENTS THE RESPONDENT SUBMITS THAT AT THE PRESENT TIME THE NUMBER OF EMPLOYEES AFFECTED BY THE INSTANT APPLICATION FOR CERTIFICATION ARE NOT "SUBSTANTIAL OR REPRESENTATIVE" OF THE NUMBER OF EMPLOYEES THAT WILL ULTIMATELY BE AFFECTED BY THIS APPLICATION FOR CERTIFICATION. ACCORDINGLY, THE RESPONDENT HEREIN REQUESTS THAT THE INSTANT APPLICATION FOR CERTIFICATION BE HELD IN ABEYANCE UNTIL AT OR ABOUT JUNE 15TH, 1972."

7. MR. MICHAEL STANIFORTH, A PROJECT ENGINEER IN THE EMPLOY OF THE RESPONDENT, WAS CALLED AS A WITNESS BY THE RESPONDENT. HE GAVE EVIDENCE THAT HE WAS EMPLOYED BY THE RESPONDENT AS A PROJECT ENGINEER AT A PLANT, ONE MILE WEST OF BATH, ONTARIO, WHICH THE RESPONDENT IS CONSTRUCTING FOR CANADA CEMENT LAFARGE LTD. IN HIS CAPACITY AS PROJECT ENGINEER, THE WITNESS HAD PREPARED A SCHEDULE FOR THE CONSTRUCTION OF THE ABOVE-NOTED PROJECT WHICH INDICATED THE WORK ACTUALLY TO BE PERFORMED BY THE RESPONDENT AND THE NUMBER OF MAN-HOURS REQUIRED TO PERFORM CERTAIN ASPECTS OF THE CONSTRUCTION.

8. MR. STANIFORTH GAVE EVIDENCE THAT THE PROJECT COMMENCED IN THE FIRST WEEK OF APRIL 1972 AND THAT THE RESPONDENT WOULD COMPLETE ITS WORK ON THE PROJECT BY THE END OF APRIL OR THE EARLY PART OF MAY 1973. THE WITNESS TESTIFIED THAT EMPLOYEES IN THE BARGAINING UNIT DEFINED IN PARAGRAPH FIVE HEREIN WOULD BE CONTINUOUSLY EMPLOYED ON THE PROJECT BY THE RESPONDENT THROUGHOUT THIS PERIOD. MR. STANIFORTH INFORMED THE BOARD THAT THE NUMBER OF EMPLOYEES IN THE BARGAINING UNIT DEFINED IN PARAGRAPH FIVE HEREIN WHO WERE, ARE OR WOULD BE EMPLOYED ON THE PROJECT WAS, IS OR WOULD BE AS FOLLOWS:

APRIL 12, 1972 (DATE OF MAKING THIS APPLICATION)	4
APRIL 21, 1972 (DATE OF RESPONDENT'S REPLY)	13
MAY 13, 1972 (WEEK ENDING)	60 (APPROX.)
JUNE 15, 1972	120 (")
OCTOBER TO DECEMBER, 1972	20
JANUARY TO APRIL, 1973	15

9. THE WITNESS TESTIFIED THAT THE RESPONDENT WAS ABOUT ONE WEEK BEHIND ITS PROJECTED SCHEDULE BUT THAT BECAUSE IT WAS EXERCISING TIGHT CONTROL ON THE PROJECT IT ANTICIPATED COMPLETING THE PROJECT BY THE END OF APRIL OR EARLY MAY 1973.

10. THE EVIDENCE BEFORE THE BOARD ESTABLISHES THAT THE PROJECT IS FOR A DURATION OF MORE THAN ONE YEAR, THAT EMPLOYEES IN THE BARGAINING UNIT DEFINED IN PARAGRAPH FIVE HEREIN WILL BE CONTINUOUSLY EMPLOYED THROUGHOUT THE PROJECT, THAT THE MAXIMUM NUMBER OF SUCH EMPLOYEES ON THE PROJECT WOULD BE REACHED AFTER APPROXIMATELY ELEVEN WEEKS AFTER THE DATE OF THE COMMENCEMENT OF THE PROJECT, THAT THE PROJECTED "BUILD-UP" OF SUCH EMPLOYEES HAS NOT BEEN CHALLENGED BY THE APPLICANT AND THAT THE RATIO OF SUCH EMPLOYEES ON THE DATE OF THE MAKING OF THIS APPLICATION, APRIL 12, 1972, TO THOSE AT THE PEAK OF THE "BUILD-UP" ON JUNE 15, 1972 IS THIRTY TO ONE.

11. SECTION 108(2) OF THE LABOUR RELATIONS ACT STATES:

"IN DETERMINING WHETHER A TRADE UNION TO WHICH SUBSECTION 1 APPLIES HAS MET THE REQUIREMENTS OF SUBSECTION 2 OF SECTION 7, THE BOARD NEED NOT HAVE REGARD TO ANY INCREASE IN THE NUMBER OF EMPLOYEES IN THE BARGAINING UNIT AFTER THE APPLICATION WAS MADE."

12. SECTION 108(2) CONFERS A DISCRETION ON THE BOARD WITH RESPECT TO THE EFFECT OF ANY INCREASE IN THE NUMBER OF EMPLOYEES IN THE BARGAINING UNIT AFTER AN APPLICATION FOR CERTIFICATION HAS BEEN MADE UNDER THE CONSTRUCTION INDUSTRY PROVISIONS OF THE LABOUR RELATIONS ACT. IN THE DEER-MINE SERVICES LIMITED CASE, O.L.R.B. MONTHLY REPORT JUNE 1971, P. 336, THE BOARD COMMENTED UPON THE COMPARATIVE SHORTNESS OF THE TYPICAL EMPLOYMENT RELATIONSHIP IN THE CONSTRUCTION INDUSTRY AND IN THE V. K. MELHORN CASE, O.L.R.B. MONTHLY REPORT, APRIL 1966, P. 65, THE BOARD COMMENTED THAT IT HAD NOT BEEN THE USUAL PRACTICE OF THE BOARD IN CONSTRUCTION INDUSTRY CASES TO HAVE REGARD TO THE "BUILD-UP" PRINCIPLE. IN FACT, THE BOARD HAS VERY RARELY HAD REGARD TO THE PRINCIPLE OF "BUILD-UP" IN CONSTRUCTION INDUSTRY CASES. (SEE, HOWEVER, THE INDUSTRIAL-MINE INSTALLATIONS LIMITED CASE, O.L.R.B. MONTHLY REPORT MAY 1968, P. 217).

13. FOR THE MOST PART, IN APPLICATIONS FOR CERTIFICATION FILED UNDER THE CONSTRUCTION INDUSTRY PROVISIONS OF THE LABOUR RELATIONS ACT, WHERE THE PRINCIPLE OF "BUILD-UP" HAS BEEN ADVANCED FOR CONSIDERATION BY THE BOARD, THE SHORT-TERM EMPLOYMENT FEATURES OF THE CONSTRUCTION INDUSTRY HAVE TAKEN PRECEDENCE OVER THE REPRESENTATION PRINCIPLE (WHICH HAS EVOLVED IN THE CONTEXT OF NON-CONSTRUCTION

INDUSTRY APPLICATIONS FOR CERTIFICATION FILED WITH THE BOARD). THIS REPRESENTATION PRINCIPLE, WHICH HAS BEEN SET FORTH IN THE FRANT AND WASELOVICH CASE, 57 CLLC ¶18.057; IS THE TASK OF BALANCING THE RIGHT, ON THE ONE HAND, OF PERSONS PRESENTLY EMPLOYED TO COLLECTIVE BARGAINING AND THE RIGHT, ON THE OTHER HAND, OF FUTURE EMPLOYEES TO SELECT A BARGAINING AGENT OF THEIR OWN CHOICE.

14. IN BALANCING THESE RIGHTS, THE BOARD HAS LOOKED TO THE LIKELIHOOD OF THE PROJECTED "BUILD-UP", TO THE DEGREE OF REPRESENTATION BY AN APPLICANT TRADE UNION AMONG THE PERSONS PRESENTLY EMPLOYED BY AN EMPLOYER AND TO THE PRESENT AND FUTURE EMPLOYMENT BY AN EMPLOYER OF A REPRESENTATIVE CROSS-SECTION OF OCCUPATIONAL CLASSIFICATIONS. THIS LATTER CONSIDERATION DOES NOT, OF COURSE, APPLY TO THE FACTS OF THE INSTANT APPLICATION.

15. ON THE BASIS OF THE EVIDENCE BEFORE THE BOARD THE RESPONDENT APPEARS TO BE EMPLOYING, AS OF THE DATE OF THIS DECISION, MORE THAN HALF OF THE ANTICIPATED MAXIMUM NUMBER OF EMPLOYEES IN THE BARGAINING UNIT DEFINED IN PARAGRAPH FIVE HEREIN. THE APPLICANT FILED EVIDENCE OF MEMBERSHIP ON BEHALF OF EACH OF THE FOUR EMPLOYEES IN THE BARGAINING UNIT DEFINED IN PARAGRAPH FIVE HEREIN ON THE DATE OF THE MAKING OF THIS APPLICATION.

16. IN ALL OF THE CIRCUMSTANCES OF THIS APPLICATION, AS SET FORTH ABOVE, WE ARE OF THE OPINION THAT THE SHORT-TERM EMPLOYMENT FEATURES OF THE CONSTRUCTION INDUSTRY AND THE REPRESENTATION PRINCIPLE ARE GIVEN APPROPRIATE CONSIDERATION BY DIRECTING THE TAKING OF A REPRESENTATION VOTE.

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DECISION OF BOARD MEMBER E. BOYER: MAY 18, 1972.

1. I DISSENT.

(SEE PAGE 559).

854-71-M: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) V. LIVINGTON TRANSPORTATION LIMITED (RESPONDENT).

BEFORE: O.B. SHIME, VICE-CHAIRMAN, AND BOARD MEMBERS O. HODGES AND F.W. MURRAY.

DECISION OF O.B. SHIME, VICE-CHAIRMAN, AND BOARD MEMBER O. HODGES:
MAY 19, 1972.

1. THIS IS AN APPLICATION PURSUANT TO SECTION 95(2) OF THE LABOUR RELATIONS ACT AND THE QUESTION REFERRED TO THE BOARD IS WHETHER CERTAIN PERSONS ARE EMPLOYEES OF THE RESPONDENT LIVINGSTON TRANSPORTATION LIMITED (HEREINAFTER REFERRED TO AS "LIVINGSTON"). THE ISSUE RAISED IS WHETHER CERTAIN OWNERS OF TRACTORS WHO HAVE A CONTRACTURAL RELATIONSHIP WITH LIVINGSTON ARE INDEPENDENT CONTRACTORS OR EMPLOYEES.

2. THIS CASE POSES THE USUAL DIFFICULTIES IN DRAWING A LINE BETWEEN AN EMPLOYMENT RELATION AND A CONTRACT ARRANGEMENT BY AN INDEPENDENT BUSINESSMAN. IT IS EVIDENT THAT THERE ARE A WIDE VARIETY OF BUSINESS RELATIONSHIPS AND DISTINCTIONS ARE READILY MADE AT THE EXTREMES; HOWEVER, MOST OF THE RELATIONSHIPS FALL INTO THE MIDDLE GROUND WHERE THE DISTINCTIONS ARE MORE DIFFICULT, AND THE LINE OF DEMARCATION BETWEEN AN EMPLOYEE AND AN INDEPENDENT BUSINESSMAN IS BLURRED WITH VARIOUS FACTORS TENDING TO WEIGHT ON ONE SIDE AND OTHER FACTORS TENDING TO WEIGH ON THE OTHER SIDE. OFTEN THE ULTIMATE DECISION WILL DEPEND ON THE RELATIVE WEIGHT AND IMPORTANCE ASSIGNED TO THE DIFFERENT FACTORS.

3. THE DIFFICULTY IN DRAWING THE LINE IS NO MORE EVIDENCE THAN IN THE TRUCKING INDUSTRY CASES. IN MANY INSTANCES, AND IT IS PRESENT IN THIS CASE, A COMPANY MAY CARRY ON A TRUCKING OPERATION WITH ITS OWN DRIVERS, OR IT MAY CONTRACT WITH AN INDEPENDENT TRUCKING COMPANY WHICH EMPLOYS DRIVERS AND WHICH OWNS TRACTOR-TRAILER UNITS TO DELIVER PRODUCTS. THE DIFFICULT SITUATION, AND THE ONE PRESENT IN THIS CASE, IS WHERE THERE IS A CONTRACT WITH AN INDIVIDUAL WHO OWNS EITHER A SINGLE TRACTOR OR A SINGLE TRACTOR-TRAILER UNIT WHICH HE HIMSELF OPERATES.

4. IN ALL THESE CASES THE DRIVERS WHO OPERATE AWAY FROM THE PREMISES ARE NOT SUBJECT TO ANY IMMEDIATE CONTROL. IN ALL CASES THE DRIVERS PICK UP THE PRODUCT AND TAKE IT TO A DESTINATION. PRACTICALLY, SINCE TIME AND COST ARE OF IMPORTANCE, MOST DRIVERS WOULD TEND TO USE THE SAME ROUTES TO REACH THEIR DESTINATION. ALSO, THE DISPATCHING, LOADING AND UNLOADING OF PRODUCT ARE SIMILAR IN THE CASES OF EMPLOYEES AND INDEPENDENT CONTRACTORS. WHAT DIFFERS IS THE NATURE OF THE ARRANGEMENTS AND THEIR EFFECT ON THE RIGHTS, DUTIES AND PRIVILEGES OF THE PARTIES TO THE ARRANGEMENT. IF THERE IS AN EMPLOYMENT RELATIONSHIP, THE PARTIES ARE SUBJECT TO DIFFERENT STATUTES, AND PARTICULARLY THE LABOUR RELATIONS ACT, WHEREAS IF THEY ARE INDEPENDENT CONTRACTORS DIFFERENT CONSIDERATIONS APPLY AND THE LABOUR RELATIONS ACT WILL NOT IN ANY WAY GOVERN THEIR RELATIONSHIP.

5. THE FAMILIAR LAW OF MASTER AND SERVANT WHICH DEVELOPED FOR THE PURPOSE OF IMPOSING VICARIOUS LIABILITY FOR PERSONAL INJURIES

UNDER THE DOCTRINE OF RESPONDENT SUPERIOR AND WHICH FOCUSED ON THE QUESTION OF CONTROL BY THE ALLEGED MASTER OF THE MANNER IN WHICH THE ALLEGED SERVANT PERFORMED THE WORK, IS BY NO MEANS THE CONTROLLING OR DETERMINING TEST FOR DIVIDING EMPLOYEES FROM INDEPENDENT CONTRACTORS, LOBLAW GROCETERIAS Co. LTD., 66 CLLC ¶16,078 (OLRB): DENHAM V. MIDLAND EMPLOYERS' MUTUAL ASSURANCE, LTD. [1955] 2 A11 E.R. 561 (C.A.); THE TELEGRAM PUBLISHING Co. LTD. TORONTO 59 CLLC ¶18,126 (OLRB).

6. A SECOND APPROACH WHICH IS SOMETIMES SUGGESTED IS THE FOUR-FOLD TEST REFERRED TO BY LORD WRIGHT IN MONTREAL V. MONTREAL LOCOMOTIVE WORKS LTD. [1947] 1 D.L.R. 161 (P.C.) AT 169 AS FOLLOWS:

"IN THE MORE COMPLEX CONDITIONS OF MODERN INDUSTRY, MORE COMPLICATED TESTS HAVE OFTEN BEEN APPLIED. IT HAS BEEN SUGGESTED THAT A FOURFOLD TEST WOULD IN SOME CASES BE MORE APPROPRIATE, A COMPLEX INVOLVING (1) CONTROL; (2) OWNERSHIP OF THE TOOLS; (3) CHANCE OF PROFIT; (4) RISK OF LOSS. CONTROL IN ITSELF IS NOT ALWAYS CONCLUSIVE. THUS THE MASTER OF A CHARTERED VESSEL IS GENERALLY THE EMPLOYEE OF THE SHIPOWNER THOUGH THE CHARTERER CAN DIRECT THE EMPLOYMENT OF THE VESSEL. AGAIN THE LAW OFTEN LIMITS THE EMPLOYER'S RIGHT TO INTERFERE WITH THE EMPLOYEE'S CONDUCT, AS ALSO DO TRADE UNION REGULATIONS."

WHILE THE FOURFOLD TEST IS HELPFUL IN MOST SITUATIONS, AND NOTWITHSTANDING THAT THE BOARD HAS INDICATED THAT ALL FOUR TESTS MUST BE SATISFIED TO DETERMINE WHETHER A PERSON IS AN INDEPENDENT CONTRACTOR, CIMA LIMITED [1963] MAY OLRB MTHLY. REP. 100 AT 102; NICKS HAULAGE LIMITED [1970] NOVEMBER OLRB MTHLY. REP. 871, THERE ARE CASES WHERE ITS APPLICATION LENDS ITSELF TO ARTIFICIALITY. IN MANY CASES THE EVIDENCE WEIGHS HEAVILY IN PERHAPS ONE OR TWO OF THE CATEGORIES BUT DOES NOT WEIGH HEAVILY IN EITHER THE THIRD OR FOURTH. IN SOME SITUATIONS THERE IS STRONG EVIDENCE IN ONE OR MORE CATEGORIES WITH NO EVIDENCE IN ANOTHER CATEGORY. HOW THEN IS ONE TO APPLY THE TEST WHERE THE WEIGHT OF THE EVIDENCE IN TWO CATEGORIES SUGGESTS ONE TYPE OF RELATIONSHIP, WHEREAS THE WEIGHT IN THE OTHER TWO CATEGORIES SUGGESTS ANOTHER FORM OF RELATIONSHIP?

7. THE THIRD APPROACH AND ONE WHICH AS OFTEN BEEN OVERLOOKED WAS ALSO REFERRED TO BY LORD WRIGHT IN THE MONTREAL V. MONTREAL LOCOMOTIVE WORKS LTD. CASE, SUPRA. AFTER REFERRING TO THE FOURFOLD TEST LORD WRIGHT MADE THE FOLLOWING STATEMENT:

"IN MANY CASES THE QUESTION CAN ONLY BE SETTLED BY EXAMINING THE WHOLE OF THE VARIOUS ELEMENTS WHICH CONSTITUTES THE RELATIONSHIP BETWEEN THE PARTIES. IN THIS WAY IT IS IN SOME CASES POSSIBLE TO DECIDE THE ISSUE BY RAISING AS THE CRUCIAL QUESTION WHOSE BUSINESS IS IT, OR IN OTHER WORDS BY ASKING WHETHER THE PARTY IS CARRYING ON THE BUSINESS, IN THE SENSE OF CARRYING IT ON FOR HIMSELF OR ON HIS OWN BEHALF AND NOT MERELY FOR A SUPERIOR."

THE APPLICATION OF THAT TEST, I.E., ASKING WHETHER THE BUSINESS IS BEING CARRIED ON FOR HIMSELF OR FOR HIS SUPERIOR, MAY LEAD TO DIFFERENT RESULTS FROM THOSE SUGGESTED BY THE APPLICATION OF THE FOUR-FOLD TEST. HOWEVER, IT IS AN APPROACH THAT IN MANY SITUATIONS COMMENDS ITSELF.

8. A FOURTH APPROACH WAS SUGGESTED BY THIS BOARD IN THE LOBLAW GROCETERIAS CO. LTD. CASE, SUPRA, AND MAY BE REFERRED TO AS A STATUTORY PURPOSE TEST. IN THE LOBLAW CASE A COMPANY HAD A COLLECTIVE AGREEMENT WITH A TRADE UNION AND WHEN IT SUBSEQUENTLY CAUSED THE AMALGAMATION OF TWO SUBSIDIARY COMPANIES - ONE WITH A COLLECTIVE AGREEMENT WITH THE SECOND UNION - THE BARGAINING RIGHTS BETWEEN THE TWO UNIONS CAME INTO CONFLICT. ONE OF THE UNIONS APPLIED TO THIS BOARD FOR A RULING AS TO WHO WAS IN FACT THE EMPLOYER OF THE EMPLOYEES AND THE BOARD WAS CALLED UPON TO CONSIDER THE EMPLOYMENT RELATIONSHIP OF DIFFERENT EMPLOYEES AND WHO WAS THEIR EMPLOYER. IN ARRIVING AT ITS DECISION THE BOARD LOOKED AT THE COMMON LAW OF THIS JURISDICTION AND AT THE PURPOSE OF THE LABOUR RELATIONS ACT. IN ARRIVING AT ITS RESULT THE BOARD STATED AT P. 894:

"IN THE RESULT, WE FIND THAT, FOR PURPOSES OF THE LABOUR RELATIONS ACT, SUPER-DISCOUNT, NOT LOBLAWS, IS THE EMPLOYER OF THE EIGHT EMPLOYEES."

WE NOTE THAT THE STATUTORY PURPOSE APPROACH HAS ALSO BEEN ADOPTED IN OTHER JURISDICTIONS WHERE IT HAS BEEN NECESSARY TO INTERPRET MODERN INDUSTRIAL LEGISLATION.

9. IN LEHIGH VALLEY COAL CO. V. YENSAVAGE 218F 547 (2D CIR. 1914), CERT. DENIED 235 U.S. 705, 35 S.CT. 282, 59 L.ED. 434, WORKERS IN THE MINES MADE INDIVIDUAL CONTRACTS UNDER WHICH THEY DUG COAL AND SOLD IT TO THE COMPANY AT A SPECIFIED PRICE PER TON. THE AGREEMENTS WERE CAREFULLY DRAWN TO MAKE THE MINERS INDEPENDENT CONTRACTORS. THE PLAINTIFF WAS INJURED AND BROUGHT AN ACTION UNDER A STATE EMPLOYER

LIABILITY ACT WHICH REQUIRED AN "EMPLOYER" TO FURNISH ITS "EMPLOYEE" A SAFE PLACE TO WORK. THEY DEFENDED THE CLAIM ON THE GROUND THAT THE ACT DID NOT APPLY TO THE PLAINTIFF AS AN INDEPENDENT CONTRACTOR. THE SECOND CIRCUIT HELD:

"IT IS ABSURD TO CLASS SUCH A MINER AS AN INDEPENDENT CONTRACTOR IN THE ONLY SENSE IN WHICH THAT PHRASE IS HERE RELEVANT. HE HAS NO CAPITAL, NO FINANCIAL RESPONSIBILITY. HE IS HIMSELF AS DEPENDENT UPON THE CONDITIONS OF HIS EMPLOYMENT AS THE COMPANY FIXES THEM AS ARE HIS HELPERS. BY HIM ALONE IS CARRIED ON THE COMPANY'S BUSINESS; HE IS THEIR 'HAND' IF ANY ONE IS. BECAUSE OF THE METHOD OF HIS PAY ONE SHOULD NOT CLASS HIM AS THOUGH HE CAME TO DO ADJUNCTIVE WORK, NOT THE BUSINESS OF THE COMPANY, SOMETHING WHOSE CONDUCT AND MANAGEMENT THEY HAD NOT UNDERTAKEN. SUCH STATUTES * * * SHOULD BE CONSTRUED, NOT AS THEOREMS OF EUCLID, BUT WITH SOME IMAGINATION OF THE PURPOSE WHICH LIE BEHIND THEM."

10. SIMILARLY, THE SUPREME COURT OF THE UNITED STATES IN N.L.R.B. v. HEARST PUBLICATIONS INC. [1944] 322 U.S. 111 IN INTERPRETING THE NATIONAL LABOR RELATIONS ACT IN THAT COUNTRY HELD THAT "NEWSBOYS" WHO DISTRIBUTED PAPERS AT NEWSSTANDS AND SPOTS AND HAWKED THEIR WAY THROUGH THE STREETS, AND RECEIVED THEIR COMPENSATION FROM THE MARGIN BETWEEN THE PRICE THEY PAID AND THE PRICE AT WHICH THEY RESOLD THE PAPERS WERE EMPLOYEES. THAT COURT INDICATED THAT THE STANDARD FOR DETERMINING WHO WAS AN EMPLOYEE FOR THE PURPOSES OF THE NLRA IN CASES IN WHICH THE PARTICULAR RELATIONSHIP PARTOOK PARTLY OF THE NATURE OF EMPLOYMENT AND PARTLY OF ENTREPRENEURSHIP WAS NOT TO BE DETERMINED BY THE COMMON LAW TEST OF A MASTER-SERVANT RELATIONSHIP BUT BY WHETHER THE PARTICULAR ARRANGEMENT WAS SUCH AS TO MAKE IT NEARLY MORE ONE OF EMPLOYMENT THAN OF INDEPENDENT BUSINESS ENTERPRISE FROM THE STANDPOINT OF THE EVILS AT WHICH THE NLRA WAS DIRECTED AND THE SUITABILITY OF COLLECTIVE BARGAINING AS A REMEDY. THAT COURT STATED AS FOLLOWS:

"INEQUALITY OF BARGAINING POWER IN CONTROVERSIES OVER WAGES, HOURS AND WORKING CONDITIONS MAY AS WELL CHARACTERIZE THE STATUS OF THE ONE GROUP AS OF THE OTHER. THE FORMER, WHEN ACTING ALONE, MAY BE AS 'HELPLESS IN DEALING WITH AN EMPLOYER', AS 'DEPENDENT * * * ON HIS DAILY WAGE' AND AS

"UNABLE TO LEAVE THE EMPLOY AND TO RESIST ARBITRARY AND UNFAIR TREATMENT' AS THE LATTER. FOR EACH, 'UNION * * * [MAY BE] ESSENTIAL TO GIVE * * * OPPORTUNITY TO DEAL ON EQUALITY WITH THEIR EMPLOYER,' AND FOR EACH, COLLECTIVE BARGAINING MAY BE APPROPRIATE AND EFFECTIVE FOR THE 'FRIENDLY ADJUSTMENT OF INDUSTRIAL DISPUTES ARISING OUT OF DIFFERENCES AS TO WAGES, HOURS, OR OTHER WORKING CONDITIONS.'" 49 STAT. 449, 29 U.S.C.A. §151. IN SHORT, WHEN THE PARTICULAR SITUATION OF EMPLOYMENT COMBINES THESE CHARACTERISTICS, SO THAT THE ECONOMIC FACTS OF THE RELATION MAKE IT MORE NEARLY ONE OF EMPLOYMENT THAN OF INDEPENDENT BUSINESS ENTERPRISE WITH RESPECT TO THE ENDS SOUGHT TO BE ACCOMPLISHED BY THE LEGISLATION, THOSE CHARACTERISTICS MAY OUTWEIGHT TECHNICAL LEGAL CLASSIFICATION FOR PURPOSES UNRELATED TO THE STATUTE'S OBJECTIVES AND BRING THE RELATION WITHIN ITS PROTECTIONS. * * * "

THAT DECISION WAS APPROVED BY THIS BOARD IN THE TELEGRAM PUBLISHING CO. LTD. TORONTO CASE, SUPRA. AT P. 1746 THE FORMER LEARNED CHAIRMAN OF THIS BOARD ALSO STATED:

"IN OUR VIEW IT IS SIGNIFICANT IN DETERMINING WHETHER A PERSON IS AN INDEPENDENT CONTRACTOR OR AN EMPLOYEE TO EXAMINE THE RELATIONSHIP AGAINST THE BACKGROUND OF THE LEGISLATION WHICH WE ARE CALLED UPON TO INTERPRET AS WELL AS TO CONSIDER THE ELEMENTS THAT HAVE A "BEARING ON THE LABOUR RELATIONS ASPECTS OF THE RELATIONSHIP".

11. WE NOW TURN TO THE FACTS OF THIS CASE IN THE LIGHT OF THE CONSIDERATIONS WHICH WE HAVE SET FORTH. JOHN RICHARD BURWELL HAS AN AGREEMENT WITH THE RESPONDENT. HE OWNS ONE TRUCK AND TRANSPORTS FREIGHT FOR THE RESPONDENT EXCLUSIVELY. HE DOES NOT EMPLOY ANY OTHER PERSON. THE TRUCK IS OWNED BY MR. BURWELL BUT IT IS PAINTED IN THE RESPONDENT'S COLOURS AND THE NAME OF THE RESPONDENT IS ON THE TRUCK AND NOT MR. BURWELL'S. THE PCV AND MOTOR REGISTRATION LICENCES AND INSURANCE ARE IN THE NAME OF AND PAID FOR BY THE RESPONDENT AND AT ALL TIMES HE USES A TRAILER OWNED BY THE RESPONDENT. HE RECEIVES HIS ORDERS FROM THE RESPONDENT'S OPERATIONS MANAGER AND TRANSPORTS THE GOODS AS DIRECTED AND IS GIVEN A TIME LIMIT WITHIN WHICH HE MUST MAKE THE DELIVERY. HE IS PAID BY THE MILE BUT ALL RECORDS ARE KEPT BY THE RESPONDENT. MR. BURWELL DOES NOT HAVE AN OFFICE OR A SEPARATE

BUSINESS TELEPHONE NOR DOES HE ADVERTISE HIS SERVICES AS AN INDEPENDENT BUSINESS OPERATION. HE IS PAID BI-WEEKLY BY A CHEQUE IN WHICH DEDUCTIONS ARE MADE FOR PUBLIC LIABILITY PROPERTY DAMAGES AND COLLISION ON THE TRACTOR. THERE ARE NO DEDUCTIONS FOR INCOME TAX, UNEMPLOYMENT INSURANCE OR WORKMAN'S COMPENSATION. WHEN MR. BURWELL WAS INJURED HE HAD ANOTHER PERSON, MR. CORKUM, SUBSTITUTE AND DRIVE HIS TRUCK AFTER PERMISSION WAS REQUESTED FROM THE RESPONDENT.

12. IN OUR VIEW MR. BURWELL IS NOT AN INDEPENDENT BUSINESSMAN. HE DOES NOT MAINTAIN AN OFFICE, HE WORKS EXCLUSIVELY FOR THE RESPONDENT UNDER THEIR PCV LICENCE. HE CANNOT HIRE HIMSELF OUT INDEPENDENTLY AS A PCV OWNER; THE PCV LICENCE IS AN ESSENTIAL "TOOL" TO THE CARRYING ON OF HIS BUSINESS AND ITS WITHDRAWAL BY LIVINGSTON WOULD IMPOSE SEVERE LIMITATIONS ON HIS ABILITY TO CARRY ON ANY BUSINESS. THIS IS FURTHER LIMITED BECAUSE HE DOES NOT HAVE A TRAILER. HE PERFORMS ON A DAY TO DAY BASIS IN EXACTLY THE SAME WAY AS ANY OTHER EMPLOYEE. THAT HIS PAYMENT IS IN A DIFFERENT FORM THAN THE ORDINARY WAGE CHEQUE IS OF LITTLE SIGNIFICANCE. IT IS NOT DIFFICULT TO ARRANGE A FINANCIAL PAYMENT IN SUCH A WAY THAT THE NET RESULT TO MR. BURWELL IS THE SAME AS THE NET RESULT TO AN EMPLOYEE AND WITH LITTLE, IF ANY, FINANCIAL ADVANTAGE TO THE DRIVER WHEN COMPARED TO THE FINANCIAL POSITION OF AN EMPLOYEE. INTERESTINGLY, JOHN TIMPANY, WHO WE WILL SHORTLY DISCUSS, HAS AN ARRANGEMENT WITH LIVINGSTON AND AN ARRANGEMENT WITH ANOTHER COMPANY WHEREIN HE IS PAID PRESUMABLY ON THE SAME BASIS, BUT IN HIS ARRANGEMENT WITH THE OTHER COMPANY HE "WORKS ON A WAGE CHEQUE" FROM WHICH THERE ARE DEDUCTIONS FOR WORKMEN'S COMPENSATION AND UNEMPLOYMENT INSURANCE AND VACATION PAY.

13. BUT THE MOST TELLING PIECE OF EVIDENCE IS THE AGREEMENT SIGNED BY MR. BURWELL. PARAGRAPH 2 OF THAT AGREEMENT PROVIDES: "THE COMPANY AGREES TO UTILIZE THE SERVICES OF THE OWNER AND MAKE USE OF THE OWNER'S VEHICLE...". WHAT WE HAVE HERE IS A DUAL ARRANGEMENT, (A) TO UTILIZE THE SERVICES OF MR. BURWELL AND (B) TO MAKE USE OF MR. BURWELL'S VEHICLE. THE ARRANGEMENT TO "UTILIZE THE SERVICES OF THE OWNER" IS CLEARLY A CONTRACT OF SERVICE WITH THE EFFECT OF MAKING MR. BURWELL AN EMPLOYEE. BUT THE CONTRACT ITSELF IS NOT CONTROLLING AND WHEN WE LOOK TO ALL THE FACTS AND CIRCUMSTANCES SURROUNDING THE ARRANGEMENT IT ONLY TENDS TO CONFIRM THAT THE RELATIONSHIP IS AN EMPLOYMENT RELATIONSHIP.

14. THUS, WHETHER ONE LOOKS TO THE STATUTORY PURPOSE OR WHETHER ONE LOOKS TO WHETHER MR. BURWELL IS CARRYING ON THE BUSINESS FOR HIMSELF OR FOR LIVINGSTON, OR WHETHER ONE LOOKS TO THE FOURFOLD TEST SUGGESTED BY LORD WRIGHT, THE ONLY CONCLUSION THAT CAN BE DRAWN IS THAT MR. BURWELL IS AN EMPLOYEE OF LIVINGSTON.

15. THE EVIDENCE CONCERNING JOHN TIMPANY IS ESSENTIALLY THE SAME AS THE EVIDENCE CONCERNING MR. BURWELL WITH RESPECT TO MOST OF

THE MATTERS DETAILED ABOVE, EXCEPT FOR CERTAIN DIFFERENCES WHICH WE FIND TO BE OF MAJOR SIGNIFICANCE. MR. TIMPANY HAS TWO TRUCKS; ONE WHICH IS USED BY LIVINGSTON IN THE SAME FASHION AS MR. BURWELL'S AND ANOTHER WHICH IS OPERATED UNDER THE SAME CIRCUMSTANCES FOR ANOTHER COMPANY. HE EMPLOYS TWO OTHER PERSONS AND HE DIRECTS AND PAYS THEM. HE SETS THEIR RATES OF PAY AND MAKES ALL THE REQUIRED DEDUCTIONS. HE KEEPS BUSINESS RECORDS, HAS AN INDEPENDENT ACCOUNTANT AND USES THE SERVICES OF HIS WIFE TO DO THE PAYROLL AND LOOK AFTER THE BOOKS.

16. THIS EVIDENCE IS CONFIRMED BY CARL JONES WHO CLAIMS HE IS EMPLOYED BY MR. TIMPANY. WHILE MR. JONES TAKES DIRECTIONS FROM LIVINGSTON AS TO THE DELIVERY OF VARIOUS TRACTORS HE IS DIRECTED BY MR. TIMPANY, IS PAID BY CHEQUES ISSUED BY MR. TIMPANY AND HIS WIFE, AND REPORTS TO MR. TIMPANY FROM TIME TO TIME.

17. IN OUR VIEW THE FACTORS OF MAINTAINING A SEPARATE OFFICE AND ACCOUNTANT, HIRING, PAYING AND DIRECTING OTHER EMPLOYEES, HAVING A RELATIONSHIP WITH MORE THAN ONE COMPANY AND PLACING HIMSELF GENERALLY IN A POSITION WHERE HIS NET FINANCIAL GAIN BEARS SOME RELATIONSHIP TO HIS CAPITAL INVESTMENT AND THE NUMBER OF EMPLOYEES WHO WORK FOR HIM, AND WHERE THERE IS SUFFICIENT SCOPE FOR VARIATION IN HIS NET FINANCIAL GAIN WHICH IS DEPENDENT ON THESE FACTORS, ARE INDICATIVE THAT MR. TIMPANY DOES NOT HAVE AN EMPLOYMENT RELATIONSHIP BUT IS A "SMALL BUSINESS-MAN".

18. IN OUR VIEW THIS CASE APPEARS TO BE DIFFERENT FROM THE FACTS REPORTED IN LENSON CELERY HEARTS LTD. [1963] MAY OLRB MTHLY. REP. 107 WHERE THE EMPLOYEE CONCERNED ALSO EMPLOYED OTHER PERSONS. MOREOVER THE DECISION AND PARTICULARLY THE FACT SITUATION OF THE SUPREME COURT OF CANADA IN INTERNATIONAL BRO. OF TEAMSTERS V. THERIEN [1960] 22 D.L.R. (2d) 1 (SCC) TIPS THE BALANCE AGAINST FINDING THAT MR. TIMPANY IS AN EMPLOYEE. IN THE THERIEN CASE THE RESPONDENT THERIEN WAS THE OWNER AND OPERATOR OF A TRUCKING BUSINESS AND OWNED A TRUCK AND EMPLOYED FOUR DRIVERS. HE SUPPLIED TRUCKS TO ANOTHER COMPANY TOGETHER WITH DRIVERS AND A TRUCK WHICH HE HIMSELF OPERATED IN CONSIDERATION OF AN AGREED UPON PAYMENT. LOCKE J. AFTER REFERRING TO THIS SITUATION SAID:

"IN THIS ARRANGEMENT THE POSITION OF THE RESPONDENT [THERIEN] WAS THAT OF AN INDIVIDUAL CONTRACTOR AND THE TRUCK DRIVERS EMPLOYED BY HIM ACTED AS HIS SERVANTS AND WERE PAID BY HIM."

APPLYING THOSE CONSIDERATIONS WE CONCLUDE THAT MR. TIMPANY IS NOT AN EMPLOYEE OF THE RESPONDENT NOR IS MR. CARL JONES WHO IS EMPLOYED BY MR. TIMPANY.

20. IN ARRIVING AT OUR CONCLUSION WE HAVE ALSO CONSIDERED THE MILLAR AND BROWN CASE, A DECISION OF THE CANADA LABOUR RELATIONS BOARD WHICH IS REFERRED TO BY MR. MURRAY, AND IN OUR VIEW HAD THE FACTS OF THAT CASE BEEN PRESENTED TO US WE WOULD NOT HAVE ARRIVED AT THE SAME DECISION AS THE CANADA LABOUR RELATIONS BOARD.

DECISION OF F. W. MURRAY, BOARD MEMBER: MAY 19, 1972.

1. I DISSENT.

2. WHILE I AGREE WITH THE CONCLUSIONS OF THE MAJORITY WITH RESPECT TO THE STATUS OF JOHN TIMPANY, I DO NOT AGREE THAT FOR ONLY THOSE REASONS SET OUT IN THE DECISION THAT THE BOARD SHOULD REACH SUCH A CONCLUSION. IN ADDITION TO THE FACT THAT MR. TIMPANY IS AN EMPLOYER AND SMALL BUSINESSMAN, I WOULD HAVE FOUND THAT HE IS A SELF-EMPLOYED PERSON AND NOT AN EMPLOYEE OF THE RESPONDENT, BECAUSE OF THE EVIDENCE CONTAINED IN THE EXAMINER'S REPORT, RELATING TO HIS RELATIONSHIP TO LIVINGSTON TRANSPORTATION.

3. I BELIEVE THE MOST ACCEPTABLE AND WIDELY HELD CRITERIA FOR DETERMINING THE STATUS OF SUCH PERSONS SUCH AS THOSE IN QUESTION WOULD BE TO EXAMINE THE FOURFOLD TEST AS IN THE MONTREAL VS. MONTREAL LOCOMOTIVE WORKS LTD. (1947) 1 D.L.R. 161 (P.C.) AT 169, WHEREIN THE QUESTION OF THE

- (1) DEGREE OF CONTROL,
- (2) OWNERSHIP OF TOOLS,
- (3) CHANCE OF PROFIT,
- (4) RISK OF LOSS

ARE TO BE EXAMINED. I DISAGREE WITH MY COLLEAGUES WHERE IT IS SUGGESTED IN PARAGRAPH 7 OF THE DECISION THAT THE ADDITIONAL COMMENTS MADE BY LORD WRIGHT, AND AS QUOTED IN PARAGRAPH 7, WOULD, IF TESTS WERE REASONABLY APPLIED, LEAD TO ANY DIFFERENT CONCLUSION.

4. ACCORDINGLY, I HAVE SET FORTH A REVIEW OF THE EVIDENCE, HAVING REGARD TO THE FOURFOLD TEST MENTIONED ABOVE, AND IT IS IMPORTANT TO NOTE THAT THE POINTS IN EVIDENCE AS OUTLINED BELOW, APPLY, NOT ONLY TO MR. TIMPANY, BUT TO MR. BURWELL AS WELL.

5. DEALING WITH THE QUESTION OF DEGREE OF CONTROL. MR. TIMPANY'S EVIDENCE WAS AS FOLLOWS:

"5. HE HAS NO ROUTE BOOK.

6. ASKED WHAT ARE THE OBLIGATIONS REGARDING SERVICE HE SAID, "WE ARE SUPPOSED TO GET THE LOADS THERE ON TIME. IF WE'RE LATE, I PAY. IF DELIVERY SERVICE IS INTERRUPTED, I GUESS I AM LIABLE".
7. HE GUESSES THAT HE HAS COMPLETE CONTROL OF RUNNING HIS OWN BUSINESS. HE HAS TO LOOK AFTER HIS OWN TRUCK AND MAKE SURE THEY ARE READY TO GO.
8. HE EMPLOYS PERSONS TO WORK FOR HIM. HE CONSULTS WITH THE RESPONDENT COMPANY TO MAKE SURE THAT THE LICENSE OF A DRIVER WHOM HE HIRES TO WORK IS OK. HE DOES THE ACTUAL HIRING. THE RESPONDENT HAS NO CONTROL OVER SUCH PERSONS HIRED BY HIM.
19. ASKED IF THE RESPONDENT HAS ANY CONTROL OVER SERVICE GIVEN BY THE WITNESS DAILY, REGULARLY OR AT INTERVALS, HE REPLIED IN THE NEGATIVE.
24. THERE ARE NO CREDIT ARRANGEMENTS BETWEEN THE RESPONDENT AND THE WITNESS.
26. REGARDING OVERTIME, THE WITNESS MAKES THE DECISIONS AS TO WHETHER OR NOT HIS EMPLOYEES WILL WORK OVERTIME AND THE RESPONDENT IS NOT CONSULTED.
35. THE WITNESS WAS ASKED, "I PUT IT TO YOU THAT LIVINGSTON DECIDES THE TIME AT WHICH YOUR TRUCK IS TO BE USED" AND HE REPLIED, "THEY TELL US WHAT LOAD IS TO GO AND WHAT TIME IT IS TO BE THERE. SOMETIMES WE DON'T ALWAYS MAKE IT THAT WAY". HE CONTINUES SAYING THAT THEY TELL HIM WHERE HE MUST GO. IF THERE IS A LOAD TO BE DELIVERED AFTER HOURS THEY TELL THE WITNESS OR DRIVERS TO PICK IT UP AND DELIVER. ASKED IF HE HAS ANY CHOICE IN THE MATTER, HE SAID, "YES, I HAVE A CHOICE TO SAY NO". HE HAS REFUSED TO DELIVER FOR LIVINGSTON HAS ASKED HIM TO DO IT. THE LAST TIME HE REFUSED WAS WHEN HIS TRUCK WAS BROKEN DOWN IN LONDON, HE DOES

NOT REMEMBER THE DATE. IT WAS NOT A REFUSAL HE SAID, HE JUST COULD NOT DO IT, HE AGREED. ASKED TO TELL ABOUT AN OCCASION WHEN HE REFUSED TO DO WORK, HE SAID HE HAS NOT REFUSED IF THE TRUCK WOULD RUN. HE SAID HE COULD REFUSE IF HE WANTED TO.

53. THE WITNESS IS PAID ON A MILEAGE BASIS. ASKED IF THAT MILEAGE IS CALCULATED ON SET SCHEDULES OR OFF THE ACTUAL ODOMETER HE SAID, "NO, FROM POINT A TO POINT B". IN TAKING TRIPS, HE FREE TO CHOOSE HIS OWN ROUTE.
59. THERE ARE NO RESTRICTIONS ON HIM INSURING PRIVATELY AS FAR AS THE COMPANY IS CONCERNED, HE SAID, "NO." HE HAS CHOSEN NOT TO, BECAUSE IT IS CHEAPER.
60. ASKED IF HE CAN INSURE HIS OWN DRIVERS PRIVATELY, HE SAID HE COULD IF HE HAD ENOUGH MONEY.
61. ASKED IF MORE THAN ONE PERSON OPERATED A VEHICLE COVERED UNDER THE AGREEMENT, HE REPLIED IN THE AFFIRMATIVE. ASKED IF HE RECEIVED COMPENSATION FROM THE COMPANY FOR THE TRIPS TAKEN BY HIS VEHICLE ON A MILEAGE BASIS, HE REPLIED IN THE AFFIRMATIVE.
62. THERE WOULD BE NO REASON TO REFUSE FREIGHT TENDERED BY THE COMPANY ASSUMING IT WAS SERVICEABLE.
67. HE IS NOT RESTRICTED IN ANY IN TERMS OF WHAT TIME AND WHEN HE TAKES HIS LUNCH, COFFEE BREAKS OR WHEN HE STOPS WORKING FOR THE DAY."

6. WITH REGARD TO MR. BURWELL'S EVIDENCE DEALING WITH RESPECT TO THE QUESTION OF CONTROL, THE FOLLOWING PARAGRAPHS FROM THE EXAMINER'S REPORT MAKES IT QUITE CLEAR THAT THE RESPONDENT DOES NOT EXERCISE THE DEGREE OF CONTROL OVER BURWELL THAT WOULD BE EXERCISED OVER AN EMPLOYEE.

118. ASKED IF THERE IS A PENALTY FOR LATE DELIVERY OF GOODS, HE SAID THAT THEY HAVE AGREED TO HAVE THEM DELIVERED ON TIME. IF GOODS ARE NOT DELIVERED ON TIME THERE IS NO PENALTY THAT HE KNOWS OF, HE SAID.

119. ASKED IF HAS COMPLETE CONTROL OF HIS BUSINESS, HE SAID HE CAN DRAW THE LOAD TODAY BUT HE IS NOT FORCED.
126. REPAIRS TO THE TRUCK ARE PAID FOR BY THE WITNESS.
130. ASKED IF THE RESPONDENT EXERCISES ANY CONTROL OVER THE MANNER IN WHICH HE CONDUCTS HIS BUSINESS, HE SAID, "YES, I MAKE AN AGREEMENT THAT I WILL DELIVER THEIR STUFF".
131. REGARDING THE MANNER OR METHOD OF WORK HE SAID THAT THEY JUST TELL HIM HE'S GOT A LOAD FOR THE MORNING OR NIGHT. HE GETS THESE ORDERS FROM Mr. FELLOWS, THE OPERATIONS MANAGER.
135. REGARDING HIS HOURS OF WORK, THIS IS DETERMINED BY THE WITNESS AND NO ONE ELSE.
141. HE SAID HE DOES OWE MONEY ON THE TRUCK. HE HAS NEVER HAD ANY ASSISTANT FROM LIVINGSTON TRANSPORTATION IN FINANCING HIS OPERATION, HE SAID. ASKED IF ANYONE HOLDS A CHATTEL MORTGAGE OR CONDITIONAL SALES CONTRACT ON HIS TRUCK, HE SAID, "YES. THERE IS A CHATTEL MORTGAGE ON IT." ASKED WHEN WAS THE CHATTEL MORTGAGE PLACED AGAINST THE TRUCK HE SAID WHEN HE BOUGHT IT IN AUGUST OR SEPTEMBER OF 1970. ASKED IF THE PERSON WHO HOLDS THE CHATTEL MORTGAGE KNOWS IF THE TRUCK IS REGISTERED IN THE NAME OF LIVINGSTON TRANSPORTATION LIMITED, HE REPLIED IN THE NEGATIVE. HE DOES KNOW IF THE CHATTEL MORTGAGE IS REGISTERED SOMEWHERE.
144. ASKED IF HE HAS EVER REFUSED TO DRIVE A LOAD WHEN LIVINGSTON TRANSPORTATION HAS ASKED HIM TO, HE REPLIED IN THE AFFIRMATIVE AND SAID THAT HE HAS REFUSED ON MORE THAN ONE OCCASION. THE LAST TIME HE REFUSED HE CANNOT TELL THE EXACT DAY BUT THAT WAS APPROXIMATELY 2 WEEKS AGO. ASKED WHY HE REFUSED HE SAID HE HAS A SON WHO IS ALONE.

HE TALKED TO MR. FELLOWS, OPERATIONS MANAGER AT LIVINGSTON TRANSPORTATION WHEN HE REFUSED. ASKED WHAT HE SAID WHEN HE REFUSED, HE SAID IT WAS OK. HE WOULD GET SOMEBODY ELSE. ASKED IF HE DID ASK HIM FOR PERMISSION NOT TO COME IN AND DRAW THE LOAD, HE SAID HE TOLD HIM THAT HE HAD A SON WHO IS ALONE AND HE WOULD NOT DRAW THE LOAD. THERE WERE TWO OR THREE OTHER OCCASIONS WHEN HE REFUSED TO DRAW A LOAD, HE SAID, AND THE REASON WAS NOT ALWAYS BECAUSE OF HIS SON. IT IS ALWAYS FELLOWS THAT HE SPOKE TO. ASKED WHAT REASONS HE GAVE FOR THE OTHER REFUSALS, HE SAID ONE WAS THAT HE HAD TO BE TO THE LAWYERS. HE CANNOT RECALL THE OTHER REASONS GIVEN. MR. FELLOWS DID TELL HIM ON ONE OF THESE OCCASIONS THAT IT WAS OK.

157. ASKED DOES THE COMPANY DETERMINE WHAT ACTUAL HIGHWAYS OR ROADS HE FOLLOWS AND HE SAID ACTUALLY THE PCV LICENSE GOVERNS THAT. ASKED "WHAT ABOUT ACTUAL ROAD?" AND HE SAID "THE PCV LICENSE DOES IN PART DETERMINE THE HIGHWAY. HE IS NOT SURE WHETHER THESE RESTRICTIONS APPLY TO THE PCV LICENSE ON HIS VEHICLE. THE COMPANY HAS NEVER TOLD HIM WHAT ROAD HE MUST FOLLOW. THE WITNESS SELECTED THE ROAD UNDER THE LOW BRIDGE.

167. THERE ARE NO LIMITS SET IN TERMS OF MILES HE DRIVES. ASKED WHAT IF HIS TRUCK IS DAMAGED OR INOPERATIVE, HE SAID THAT HE IS OUT OF BUSINESS UNTIL IT IS FIXED.

179. WHEN HE PICKS UP LOADS, HE WAS ASKED IF LIVINGSTON TRANSPORT TELLS HIM BY WHAT TIME IT MUST BE DELIVERED TO IT'S DESTINATION AND HE REPLIED, "YES. WE HAVE CERTAIN LOADS THAT HAVE TO BE AT A DESTINATION AT A CERTAIN TIME". THE COMPANY HAS NEVER HAD LOADS THAT IT HAS TO GET OUT IN A HURRY AND CONSEQUENTLY TELL HIM THE TIME THAT IT MUST BE PICKED UP. THE WITNESS WAS LEFT TO HIS OWN JUDGEMENT AND HIS JUDGEMENT IS BASED ON THE TIME THE LOAD HAS TO BE AT ITS DESTINATION."

CONCERNING THE STATUS OF MR. BURWELL, THE EVIDENCE AS CONTAINED IN

PARAGRAPHS 170, 174, 175, 176, ALSO INDICATES THAT MR. BURWELL IS AN EMPLOYER, ALBEIT, HE HAD AT THE TIME OF THE HEARING, JUST STARTED TO BE AN EMPLOYER. (THE EXAMINER'S REPORT HEARINGS WERE CONDUCTED IN MID-NOVEMBER, 1971). MR. BURWELL HAD STARTED TO OPERATE FOR LIVINGSTON IN AUGUST OF 1971, ALTHOUGH HE HAD BEEN AN INDEPENDENT CONTRACTOR FOR OVER TWO YEARS.

"116. JOHN RICHARD BURWELL STATED TO THE EXAMINER THAT HE IS EMPLOYED BY LIVINGSTON TRANSPORTATION LIMITED. THEN HE WENT ON TO SAY HE WOULD NOT SAY THAT HE IS AN EMPLOYEE. "I AM A BROKER, I'M NOT AN EMPLOYEE". HE HAS BEEN A BROKER FOR A LITTLE BETTER THAN TWO YEARS, ACTUALLY 2 YEARS AND A MONTH. HE HAS NEVER AN EMPLOYEE OF THE RESPONDENT. HE HAS AN AGREEMENT WITH LIVINGSTON TRANSPORTATION LIMITED, WHICH IS SIGNED BY MR. FELLOWS, OPERATIONS MANAGER, AND WITNESSED BY M. K. GREENFIELD."

7. IT WAS ALSO CLEAR FROM THE EVIDENCE THAT BOTH MR. TIMPANY AND MR. BURWELL, ALTHOUGH FREE TO PURCHASE THEIR INSURANCE FROM WHOM-EVER THEY WISHED, HAD PURCHASED IT THROUGH LIVINGSTON BECAUSE THEY COULD GET IT CHEAPER THROUGH FLEET INSURANCE. THIS EVIDENCE IS CONTAINED IN PARAGRAPH 59 OF THE EXAMINER'S REPORT.

8. IT WAS ALSO EXPLAINED THAT BOTH TIMPANY AND BURWELL REPORT TO THE INSURANCE COMPANY THROUGH LIVINGSTON, THE NAMES OF ANY OF THEIR EMPLOYEES THAT THEY INTEND TO HIRE AS THE INSURANCE COMPANY WILL NOT COVER VEHICLES DRIVEN BY A PERSON WHOSE RECORD HAD INCLUDED LOSS OF POINTS. I REFER HERE TO PARAGRAPH 37 OF THE EXAMINER'S REPORT.

9. FURTHER, WITH RESPECT TO THE TEST OF CONTROL IN THE ELLIOTT & SONS LTD. AND PRESTON SONS LTD. (1957) O.W.N. 205, IT WAS HELD THAT A NEWSPAPER CARRIER WAS NOT A SERVANT BUT AN INDEPENDENT CONTRACTOR BECAUSE THE NEWSPAPER HAD NO CONTROL OVER THE TERMS OR METHOD USED BY THE NEWSBOYS TO EFFECT THE DELIVERY. AS WAS SAID IN THE HUME TRANSPORT LTD. AND TEAMSTERS LOCAL 938 ARBITRATION CASE, UNDER CHAIRMAN, JUDGE R. W. REVILLE, L.A.C., VOLUME 14, PAGE 152, AND SPECIFICALLY ON PAGE 160

"ALL THESE CASES PROCEED ON THE BASIS OF THE TEST OF CONTROL AND HELD AS FOLLOWS:

IF A PERSON IS BOUND TO DO THE WORK UNDER THE DIRECTION AND CONTROL OF THE EMPLOYER, IE: NOT ONLY WHAT WORK IS TO BE DONE, THEN THAT PERSON IS A SERVANT OR EMPLOYEE. IF, ON THE OTHER HAND, A PERSON IS FREE TO DO THE WORK

IN HIS OWN WAY, AT HIS OWN TIME, AND WITH HIS OWN MATERIAL AND WORKMEN, BEING RESPONSIBLE ONLY TO THE OWNER FOR THE RESULTS, THEN HE IS AN INDEPENDENT CONTRACTOR."

IT SHOULD BE OBSERVED THAT IN THE HUMES TRANSPORT ARBITRATION CASE, WHICH IN ALL MATERIAL RESPECTS IS INDENTICAL TO THE CASE AT HAND, THE ARBITRATION BOARD RULED THE OWNER-OPERATOR TO BE AN INDEPENDENT CONTRACTOR.

10. AGAIN, TO REFER TO OTHER CANADIAN JURISPRUDENCE, RECENTLY THE CANADA LABOUR RELATIONS BOARD UNDER THE CHAIRMANSHIP OF A. H. BROWN, IN THE GENERAL TRUCK DRIVERS AND HELPERS LOCAL UNION No. 31, GENERAL TEAMSTERS UNION, LOCAL 181, GENERAL TEAMSTERS LOCAL UNION No. 362, CHAUFFEURS, TEAMSTERS & HELPERS LOCAL UNION No. 395, AND GENERAL DRIVERS, WAREHOUSEMEN AND HELPERS, LOCAL UNION No. 979, OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) AND MILLAR & BROWN LTD. (RESPONDENT), T. M. DAWSON, ET AL (INTERVENERS), (UNREPORTED) HELD THAT THE OWNER-OPERATORS IN QUESTION WERE INDEPENDENT CONTRACTORS.

11. THE MILLER BROWN AND HUMES TRANSPORT CASES DIFFER ONLY FROM THE INSTANT CASE IN THAT THERE WAS NO WRITTEN AGREEMENT BETWEEN THE OWNER-OPERATOR AND THE COMPANY. I QUOTE FROM PARAGRAPH 10 OF THE MILLAR BROWN CASE. THESE PARAGRAPHS CONTAIN EIGHT SUB-PARAGRAPHS WHICH OUTLINE THE CONDITIONS OF THE "AGREEMENTS" BETWEEN THE COMPANY AND THE OWNER-OPERATOR.

"ACCORDING TO THE EVIDENCE GIVEN AT THE HEARING HELD BY THE BOARD ON THE APPLICATION, THE RESPONDENT SECURES THE USE 37 ROAD HAUL TRACTORS OWNER BY THE OWNER-OPERATORS AND THE SERVICES OF THE OWNER-OPERATORS AS THE DRIVERS THEREOF UNDER INDIVIDUAL AGREEMENTS WITH THE OWNER-OPERATOR OF THE TRACTOR ON TERMS AND CONDITIONS WHICH ARE OF A UNIFORM NATURE FOR ALL SUCH AGREEMENTS APART FROM SOME MINOR VARIATIONS IN THE AGREEMENTS ENTERED INTO WITH A SMALL MINORITY OF OWNER-OPERATORS WHO HAVE ESTABLISHED THEMSELVES AS A CORPORATE ENTITY. THE TERMS AND CONDITIONS OF THESE AGREEMENTS, NONE OF WHICH HAVE BEEN REDUCED TO WRITING, ARE SUBSTANTIALLY AS FOLLOWS.

(1) THE RESPONDENT HIRES THE OWNER-OPERATOR'S TRACTOR AND THE SERVICES OF THE OWNER-OPERATOR THEREOF AS A DRIVER THEREOF TO HAUL THE RESPONDENT'S TRAILERS IN THE HAUL

OF FREIGHT IN THE RESPONDENT'S ROAD TRANSPORTATION FREIGHTING BUSINESS AT AN AGREED MILEAGE RATE. THE RESPONDENT IS RESPONSIBLE FOR THE PAYMENT OF WORKMEN'S COMPENSATION ASSESSMENTS AND THE PROVISION OF PUBLIC LIABILITY AND PROPERTY DAMAGE INSURANCE ON THE TRACTOR UNIT AND GIVES THE OWNER-OPERATOR THE OPTION OF COMING IN UNDER THE RESPONDENT'S FLEET PROTECTION INSURANCE POLICY COVERING DAMAGE ARISING OUT OF COLLISION OR UPSET OF THE VEHICLE, AT A SPECIFIED MONTHLY RATE TO BE DEDUCTED FROM THIS OWNER-OPERATOR'S MONTHLY EARNINGS. THE OWNER-OPERATOR IS RESPONSIBLE FOR PAYMENT OF HIS OWN UNEMPLOYMENT INSURANCE, DEDUCTIONS AND INCOME TAX AND PENSION PAYMENTS, AND THE PROVISION FOR AND PAYMENT OF THE COSTS OF MAINTENANCE AND REPAIR OF HIS OWN TRACTOR UNIT. THE MAINTENANCE FACILITIES OF THE RESPONDENT ARE NOT AVAILABLE FOR USE BY HIM FOR THIS PURPOSE. HE IS RESPONSIBLE FOR PAYMENT OF THE GAS AND OIL USED IN THE OPERATION OF HIS TRACTOR UNIT BUT MAY AT HIS OPTION USE THE RESPONDENT'S FUEL FACILITIES AND IS PROVIDED WITH A COMPANY CREDIT CARD FOR GAS AND OIL USED ENROUTE BUT IS BILLED BY THE RESPONDENT FOR THE RECOVERY OF ALL FUEL CHARGES. ALL OPERATING LICENCES INCLUDING MOTOR VEHICLE PLATES REQUIRED IN THE USE OF THE TRACTOR IN THE RESPONDENT'S OPERATIONS ARE PURCHASED BY AND ISSUED TO THE RESPONDENT IN ITS OWN NAME IN COMPLIANCE WITH THE REQUIREMENTS OF THE SEVERAL PROVINCIAL LICENSING AUTHORITIES, AND I.C.C. REQUIREMENTS. THE COSTS THEREOF ARE ABSORBED BY THE RESPONDENT. THE OWNER-OPERATOR IS RESPONSIBLE TO SECURE AND PAY THE COSTS OF HIS OWN DRIVING LICENSE. HE IS REQUIRED TO PAINT HIS TRACTOR IN THE RESPONDENT'S COLOURS AT HIS OWN EXPENSE AND TO CARRY HIS OWN NAME THEREON AS WELL. HE IS NOT REQUIRED TO KEEP HIS TRACTOR ON THE RESPONDENT'S PREMISES NOR DOES THE AGREEMENT REQUIRE THE TRACTOR TO BE KEPT FOR THE RESPONDENT'S EXCLUSIVE USE DURING THE PERIOD OF THE AGREEMENT. HOWEVER, SUCH OTHER USE OF THE TRACTOR FOR COMMERCIAL PURPOSES WOULD APPEAR UNLIKELY AS THIS WOULD REQUIRE THE USE OF OTHER LICENCE PLATES. THE EVIDENCE OF THE OWNER-OPERATOR CALLED AS A

WITNESS BY THE RESPONDENT IS THAT HE WAS ADVISED BY THE RESPONDENT AT THE TIME OF ENTRY INTO THE SERVICE OF THE RESPONDENT THAT HE COULD COUNT ON AN AVERAGE OF AT LEAST 10,000 MILES PER MONTH FOR TRACTOR USE UNDER THE AGREEMENT

- (2) EITHER PARTY MAY TERMINATE THE AGREEMENT AT ANY TIME WITHOUT PRIOR NOTICE, AND IN SUCH EVENT THE LICENCE PLATES CARRIED ON THE TRACTOR WILL BE REMOVED BY THE RESPONDENT AND RESPONDENT'S NAME REMOVED FROM THE VEHICLE.
- (3) ALL OWNER-OPERATORS ARE REQUIRED IN ACCORDANCE WITH THE PROVISIONS OF THE COLLECTIVE AGREEMENT REFERRED TO ABOVE TO BECOME MEMBERS OF THE APPROPRIATE TEAMSTERS LOCAL UNION AND ARE REQUIRED BY THE RESPONDENT TO TAKE OUT COVERAGE UNDER THE TEAMSTERS' HEALTH AND WELFARE PLAN FOR THEIR OWN PROTECTION.
- (4) THE OWNER-OPERATOR SUBMITS MONTHLY HIS STATEMENT OF MILEAGE EARNINGS AND THE RESPONDENT AFTER MAKING DEDUCTIONS FOR FUEL AND ROAD REPAIR COSTS AND A CHECK-OFF FOR UNION DUES AND UNION WELFARE PAYMENTS SENDS THE OWNER-OPERATOR A CHEQUE FOR THE AMOUNT OF THE MONTHLY EARNINGS.
- (5) THE OWNER-OPERATOR IS SOLELY AND WHOLLY RESPONSIBLE FOR THE COST OF PURCHASE AND THE FINANCING OF THE PURCHASE OF HIS TRACTOR AND RECEIVES NO FINANCIAL ASSISTANCE IN RESPECT THEREOF FROM THE RESPONDENT. THE MAJORITY OF THESE TRACTORS INCLUDE A SLEEPER CAB FACILITY TO ENABLE THE USE OF TWO DRIVERS THEREON BUT ON THE RESPONDENT'S OPERATION ONLY THE ONE DRIVER, NAMELY, THE OWNER-OPERATOR, IS REQUIRED. THE EVIDENCE IS THAT THE PURCHASE PRICE OF A TRACTOR OF THE TYPE USED IS IN THE \$30,000. RANGE.

IN THE EVENT ANOTHER DRIVER IS REQUIRED AS A RELIEF TO AN OWNER-OPERATOR, SUCH RELIEF DRIVER SHALL BE A TEAMSTER UNION MEMBER.

- (6) AN OWNER-OPERATOR IS NOT REQUIRED TO TAKE DRIVER OR MEDICAL TESTS BY THE RESPONDENT PRIOR TO HIS ACCEPTANCE BUT THE RESPONDENT SATISFIED ITSELF BY PRIOR INQUIRY AS TO HIS QUALIFICATIONS TO OPERATE THE TRACTOR IN ACCORDANCE WITH THE REQUIREMENTS OF THE AGREEMENT.
- (7) UNDER THE OPERATING ARRANGEMENTS IN EFFECT, THE OWNER-OPERATORS ARE DISPATCHED FROM THE RESPONDENT'S VARIOUS TERMINALS ON A ROTATION BASIS SIMILAR TO THAT APPLIED IN THE CASE OF COMPANY LINE HAUL DRIVERS, THAT IS TO SAY, THE FIRST TRACTOR TRAILER UNIT COMING INTO THE TERMINAL WILL BE THE FIRST OUT ON THE NEXT RUN PROVIDED THE DRIVER HAS HAD HIS REST. THE OWNER-OPERATOR HAS NO PART IN THE FIXING OR COLLECTION OF CUSTOMER FREIGHT CHARGES OR SOLICITATION OF BUSINESS. THE RESPONDENT'S DISPATCHER DIRECTS WHERE THE OWNER-OPERATOR IS TO GO ON THE RUN AND HE IS REQUIRED TO KEEP TO THE TRIP TIME TABLE GIVEN TO HIM BY THE DISPATCHER IN THE RUNNING ORDER. THE RESPONDENT ISSUES AN INSTRUCTION MANUAL TO ITS OWN DRIVERS CONTAINING THE COMPANY RULES RELATING TO THE MAKING OF REPORTS AND HANDLING OF BILLS AND THE DRIVING OF COMPANY EQUIPMENT, ETC. THE CONTENT OF THIS MANUAL DOES NOT APPLY TO THE OWNER-OPERATORS AND ACCORDING TO THE EVIDENCE, APART FROM COMPLIANCE WITH THE DISPATCH INSTRUCTIONS, THE RESPONDENT DOES NOT ATTEMPT TO DIRECT THE OWNER-OPERATOR AS TO ANY OTHER MATTER INVOLVED IN THE OPERATION OF THE TRACTOR UNIT WITH ONE EXCEPTION NAMELY THAT THE OWNER-OPERATOR IS EXPECTED TO COMPLY WITH THE ROAD SAFETY DRIVING RULES FOR ALL DRIVERS POSTED BY THE RESPONDENT ON ALL TERMINAL BULLETIN BOARDS FROM TIME TO TIME AND ALL DRIVERS WHETHER OWNER-OPERATORS OR LINE DRIVERS ARE MONITORED BY THE RESPONDENT'S RADAR

ROAD CONTROL SYSTEM WHICH CHECKS ALL UNITS FOR ROAD SPEEDS IN THE AREAS WHERE THIS CONTROL OPERATES. PENALTIES ESTABLISHED FOR NON-OBSERVANCE OF THESE BULLETINED INSTRUCTIONS INVOLVE SUSPENSIONS FOR ONE OR MORE TRIPS OR FOR A SPECIFIED PERIOD OF TIME. IT APPEARS TO BE A MATTER FOR THE OWNER-OPERATOR TO DECIDE WHETHER HE WILL ACCEPT SUCH PENALTY FOR NON-OBSERVANCE OR TAKE AN ALTERNATIVE COURSE OF ACTION TERMINATING HIS AGREEMENT WITH THE RESPONDENT. THE OWNER-OPERATOR IS RESPONSIBLE FOR PAYMENT OF ANY FINE LEVIED FOR OVERLOADING IF HE HASN'T WEIGHED HIS UNIT BEFORE LEAVING THE TERMINAL. IN GENERAL THE RESPONDENT'S RECOURSE IN EVENT OF UNSATISFACTORY PERFORMANCE BY THE OWNER-OPERATOR IS BY WAY OF TERMINATION OF THE AGREEMENT.

- (8) ACCORDING TO DAWSON'S EVIDENCE THE MILEAGE RATE PAYABLE TO OWNER-OPERATORS UNDER THE AGREEMENTS HAS BEEN UNILATERALLY INCREASED IN EACH OF THE PAST THREE YEARS BY THE RESPONDENT AT A FIGURE WHICH THE OWNER-OPERATORS HAVE ACCEPTED."

IN THIS CASE THE OWNER-OPERATOR IS EXPECTED TO COMPLY WITH ROAD SAFETY DRIVING RULES AS APPLIED TO EMPLOYEE DRIVERS AND ARE, LIKE THE EMPLOYEE DRIVERS, MONITORED BY THE RESPONDENT'S MOBILE RADAR ROAD CONTROL SYSTEM. PENALTIES FOR NON-OBSERVANCE OF THE RESPONDENT'S BULLETINED INSTRUCTIONS SUCH AS OPERATING IN EXCESS OF COMPANY ESTABLISHED SPEED LIMITS APPLIES TO BOTH EMPLOYEE DRIVERS AND OWNER-OPERATORS. AS WAS OBSERVED IN THE BOARD'S DECISION, THE OWNER-OPERATOR EITHER ACCEPTED THE PENALTY OR TERMINATED HIS AGREEMENT WITH THE RESPONDENT.

12. IN THE INSTANT CASE, IT IS QUITE CLEAR THAT THE OWNER-OPERATORS ARE ASSIGNED BY A DISPATCHER WHO IS A DIFFERENT PERSON THAN THE DISPATCHER WHO ASSIGNS TRIPS TO THE RESPONDENT'S SUPPLY DRIVERS. CLEARLY THEY ARE "RESPONSIBLE TO THE OWNER" (OR AGENT OF THE OWNER) WHO IS A DIFFERENT PERSON THAN THE COMPANY'S EMPLOYEE DISPATCHER, "ONLY FOR THE RESULTS".

13. THE MAJORITY HAS DEALT AT LENGTH WITH SEVERAL N.L.R.B. DECISIONS IN THE U.S.A., ONE INVOLVING COAL MINERS AND ONE INVOLVING NEWSPAPER NEWSBOYS. WHILE THE MAJORITY WAS NO DOUBT SEEKING TO REFER

TO A PRINCIPLE UPON WHICH TO MAKE A FINDING, IT WOULD SEEM TO ME, IF AMERICAN JURISPRUDENCE IS TO BE SOUGHT, WE MIGHT EXAMINE REISCH TRUCKING AND TRANSPORTATION Co. Inc., AND FREIGHT DRIVERS & HELPERS UNION No. 557, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, BEFORE THE NATIONAL LABOUR RELATIONS BOARD (CASE No. 5 - RC - 4137 JULY 30, 1963 AS REPORTED IN 143 NLRB No. 104). THIS CASE IS MUCH MORE COMPARABLE TO THE INSTANT CASE. THE ONLY EXCEPTIONS ARE THAT IN THE CASE OF REISCH, THE DRIVERS ARE TO TRAVEL ON ROUTES MORE SPECIFICALLY DESIGNATED BY THE COMPANY AND THEIR WORK IS ASSIGNED TO THEM BY THE SAME DISPATCHER AS DISPATCHES THE COMPANY OWNED EQUIPMENT DRIVEN BY EMPLOYEES OF THE COMPANY.

14. THERE ARE OF COURSE A NUMBER OF OTHER DECISIONS OF THE N. L. R. B. IN THE UNITED STATES OF AMERICA, WHEREIN THE BOARD FOUND PERSONS ALLEGED TO BE INDEPENDENT OPERATORS TO BE EMPLOYEES OF THE COMPANY FOR WHOM THEY HAULED. A CLOSE EXAMINATION SHOWS THAT THEY TURNED UPON THEIR OWN PARTICULAR FACTS.

15. THE DECISIONS PREVIOUSLY REFERRED TO OF THE CANADA LABOUR RELATIONS BOARD SHOULD, IN MY OPINION BE GIVEN MORE WEIGHT IN THE LIGHT OF CANADIAN LAW AND JURISPRUDENCE.

16. TURNING NEXT TO THE QUESTION OF THE OWNERSHIP OF THE TOOLS, EVIDENCE IN THE EXAMINER'S REPORT CLEARLY SHOWED THAT BOTH TIMPANY AND BURWELL OWNED THE VEHICLES LEASED TO THE RESPONDENT AND THAT THEY HAD PURCHASED THEIR VEHICLES WITHOUT CONSULTATION WITH THE RESPONDENT, OR IN ANY WAY ASSISTED OR FINANCIALLY BACKED BY THE RESPONDENT. IN THIS RESPECT THIS CASE DIFFERS DRAMATICALLY WITH THE HAMILTON TRUCKING CASE, [1971] OLRB REP. APRIL, PAGE 237. THE EVIDENCE FURTHER DISCLOSED THAT BOTH BURWELL AND TIMPANY HAVE BEEN OWNER-OPERATORS FOR OTHER FIRMS BEFORE CONTRACTING IN AUGUST OF 1971 TO HAUL FOR THE RESPONDENT. INDEED, TIMPANY HAS A SECOND VEHICLE WHICH HE LEASED TO ANOTHER FIRM (H. B. AND THAT TIMPANY, TOGETHER WITH TWO PERSONS (MATHEWS AND JONES) EMPLOYED BY HIM OPERATE THESE VEHICLES FOR LIVINGSTON.

17. I ASSUME THAT IN THE MAJORITY DECISION THERE IS NO QUESTION THAT TIMPANY AND BURWELL OWN THE VEHICLES IN QUESTION.

18. THE EVIDENCE DEALING WITH TESTS RESPECTING CHANCE OF PROFIT AND RISK OF LOSS IS SO CLOSELY RELATED AND INTERWOVEN THAT IT MUST BE EXAMINED TOGETHER AS PART OF A WHOLE SITUATION.

19. THE EVIDENCE WITH RESPECT TO TIMPANY QUOTES TIMPANY AS SAYING "IF WE ARE LATE I PAY - IF DELIVERY SERVICE IS INTERRUPTED, I GUESS I'M LIABLE" SEE PARAGRAPH 6, HE EMPLOYS TWO PERSONS AND HAS CONTROL OVER THESE PERSONS. IF THEIR PRODUCTIVITY IS HIGH, HIS CHANGE OF PROFIT IS GOOD; IF THAT PRODUCTIVITY IS LOW, HIS RISK OF LOSS IS HIGH.

20. PUT IN ANOTHER WAY, IF BY THE USE OF THEIR OWN SKILLS (INCLUDING ADMINISTRATIVE) THEY CAN ACQUIRE MAXIMUM UTILIZATION OF THEIR INVESTMENT, IE: A LOW PORTION OF TOTAL TIME WHEN THE TRUCKS ARE IDLE BECAUSE OF MECHANICAL BREAKDOWN AND CAN MAKE HIS EQUIPMENT AVAILABLE TO THE RESPONDENT AND THE OTHER FIRM FOR WHOM HE HAULS, THEN THEIR CHANCE OF PROFIT IS GOOD. IF THEY FAIL TO DO THESE THINGS, THEN THEIR RISK OF LOSS IS HIGH.

21. THERE IS NO NEED TO QUOTE THOSE PARAGRAPHS OF THE EXAMINER'S REPORT DEALING WITH THE QUESTION OF TIMPANY AND BURWELL PAYING ALL OF THEIR OWN BILLS FOR MAINTENANCE, FUEL, ETC. OF THE VEHICLE LEASED TO THE RESPONDENT. NEITHER TIMPANY OF BURWELL HAVE ANY QUARANTEE OF USE, BUT ARE ONLY COMPENSATED BY THE RESPONDENT BY WAY OF A TARIFF FOR FREIGHT HANDLED.

22. BECAUSE BURWELL HAS ONLY ONE TRUCK AND HAD ONLY RECENTLY (PRIOR TO THE EXAMINER'S HEARINGS) EMPLOYED ONE MAN, WE CAN ONLY CONCLUDE THAT BURWELL IS A SMALLER BUSINESSMAN THAN TIMPANY AND HIS OPPORTUNITY TO EARN A VOLUME OF PROFIT OR EXPERIENCE A LOSS IS LESS THAN THAT OF TIMPANY'S, BUT IT IS CLEAR BOTH THE CHANCE OF PROFIT AND RISK OF LOSS IS PRESENT IN BOTH CASES.

23. THERE IS NO EVIDENCE TO INDICATE THAT THERE IS ANY DIFFERENCE BETWEEN THE RELATIONSHIP OF TIMPANY AND THE RESPONDENT AND BURWELL AND THE RESPONDENT. I CAN ONLY CONCLUDE THAT THEIR RELATIONSHIP WITH THE RESPONDENT IS THE SAME. TO PUT IT ANOTHER WAY, BURWELL COULD HAVE A GREATER (OR THE SAME) RISK OF LOSS THAN TIMPANY OF A GREATER (OR THE SAME) CHANCE OF PROFIT AS TIMPANY, FROM A STAND-POINT OF A PERCENTAGE OF RETURN ON INVESTED CAPITAL, DEPENDENT SOLELY ON THEIR RELATIVE ABILITY TO OPERATE THEIR EQUIPMENT EFFICIENTLY.

24. AS THE OUTSET, I AGREE WITH THE MAJORITY CONCLUSION IN PARAGRAPH 18 OF THE MAJORITY DECISION, BUT NOT NECESSARILY FOR THE SAME REASON.

25. THERE ARE SEVERAL OBSERVATIONS AND RESULTING CONCLUSIONS IN THE MAJORITY DECISION WHICH I WISH TO DISCUSS. SPECIFICALLY, I REFER TO PARAGRAPH 12 AND 13 OF THE DECISION. DEALING WITH THESE MATTERS IN ORDER, THE EVIDENCE CLEARLY SHOWED THAT BURWELL DID IN FACT EMPLOY A PERSON (CORKUM) (ALBEIT NOT ON THE DATE OF THE MAKING OF THE APPLICATION) AND DID IN FACT HIMSELF SET UP THE TERMS OF HIS EMPLOYMENT, WAGE RATES, ETC., AND HE TELLS CORKUM WHAT TO DO. IN HIRING CORKUM HE CHECKED WITH THE RESPONDENT FOR WHAT HE SAID WAS BECAUSE "I'M DRAWING THEIR CARGO", BUT WE CAN ALSO SEE FROM THE TOTAL EVIDENCE THAT HE PURCHASED HIS COLLISION INSURANCE THROUGH THE COMPANY FLEET POLICY (AT THE RATE OF .01 CENTS PER MILE) AND THE UNDERWRITERS REQUIRED A SCREENING PROCESS OF DRIVERS BEFORE THEY WOULD INCLUDE THE OPERATION OF A VEHICLE UNDER THE TERMS OF THE FLEET INSURANCE POLICY.

26. THE FACT THAT HE RECEIVED HIS "ORDERS" FROM THE OPERATIONS MANAGER RATHER THAN THE DISPATCHER WHO ASSIGNS TRIPS TO THE COMPANY'S EMPLOYEE TRUCK DRIVERS AND THE FACT THAT HE HAS REJECTED TRIPS FROM THE OPERATIONS MANAGER, ARE IN MY OPINION CLEARLY DEMONSTRATIVE OF AN INDEPENDENT CONTRACTOR RELATIONSHIP. THE EVIDENCE CLEARLY INDICATED THAT HE IS NOT GIVEN A TIME LIMIT (IE: A STARTING TIME AS IS GIVEN TO EMPLOYEE-DRIVERS) TO DELIVER THE CARGO. THE EVIDENCE IS CLEAR THAT HE CAN START A TRIP WHENEVER HE LIKES. THE FACT THAT HE IS ADVISED OF THE TIME OF DELIVERY TO THE RESPONDENT'S CUSTOMER IS QUITE A DIFFERENT METHOD OF DISPATCH THAN THAT APPLIED TO EMPLOYEES.

27. TO STATE THAT HE CANNOT HIRE HIMSELF OUT AS P.C.V. OWNER IS OF COURSE CORRECT. BURWELL STARTED HAULING FOR THE RESPONDENT IN AUGUST OF 1971, YET HE CLAIMED EARLY IN HIS TESTIMONY, PARAGRAPH 116, "I'M A BROKER, I'M NOT AN EMPLOYEE". HE HAD BEEN A BROKER FOR A LITTLE BETTER THAN TWO YEARS. I CAN ONLY CONCLUDE THAT HE HAD, FOR BETTER THAN TWO YEARS, OWNED HIS OWN VEHICLE AND LEASED IT AND HIS SERVICES TO OTHER COMPANIES LONG BEFORE HE UNDERTOOK THE CONTRACT WITH THE RESPONDENT. ACCORDINGLY, I DO NOT CONCLUDE THAT THE HIRING OUT OF HIS TRACTOR INDEPENDENTLY IS RESTRICTED. TO THE CONTRARY, THE EVIDENCE INDICATES HE HAS BEEN LEASING OUT HIS EQUIPMENT FOR NEARLY TWO YEARS PRIOR TO CONTRACTING WITH THE RESPONDENT.

28. THERE IS NO EVIDENCE TO INDICATE THAT HE OPERATED ON A DAY TO DAY BASIS, THE SAME AS AN EMPLOYEE-DRIVER. HE WAS ANSWERABLE TO THE OPERATIONS MANAGER, NOT THE COMPANY'S DISPATCHER. HE HAD REJECTED TRIPS WITHOUT ANY APPARENT PENALTY FROM THE RESPONDENT. HE PAID FOR HIS OWN FUEL AND REPAIRS TO HIS TRUCK. HE WAS NOT PAID WORKMEN'S COMPENSATION OF UNEMPLOYMENT INSURANCE, NOR WAS HE PAID FOR HOLIDAYS, NOR GUARANTEED ANY WORK, NOR HAS BURWELL BEEN SUBJECT TO OTHER DEDUCTIONS OR PRIVILEGES APPLICABLE TO THE COMPANY'S EMPLOYEE DRIVERS, AS OUTLINED IN PARAGRAPH 12 OF THE MAJORITY DECISION.

29. THE FACTS REMAIN HOWEVER BOTH BURWELL AND TIMPANY HAD (A) IDENTICALLY THE SAME ARRANGEMENTS WITH THE RESPONDENT, (B) BOTH STATED CLEARLY THE OPINION THAT THEY DID NOT CONSIDER THEMSELVES TO BE EMPLOYEES OF THE RESPONDENT, (C) ALL FINANCIAL ARRANGEMENTS BETWEEN THEM AND THE RESPONDENT WERE IDENTICAL IN ALL RESPECTS, IE: RATES OF COMPENSATION, LACK OF "EMPLOYEE BENEFITS", LACK OF DEDUCTIONS FOR SUCH ELEMENTS AS TAX, WORKMEN'S COMPENSATION, UNEMPLOYMENT INSURANCE, PENSION PLANS. (D) THEIR DAY TO DAY RESPONSIBILITY TO THE RESPONDENT WAS IDENTICAL. (E) BOTH WERE NOT SUBJECT TO THE SAME CONTROLS AS EMPLOYEES HAVING REGARD TO STARTING TIMES - ROUTES DISPATCHING PERSONNEL.

30. THE FACT THAT THE FORM OF PAYMENT, HAVING DUE REGARD FOR THE LACK OF SOME ELEMENTS AND THE PRESENCE OF OTHER ELEMENTS, IS IN

MY OPINION OF VERY SIGNIFICANT IMPORTANCE IF WE ARE TO CONSIDER (1) CHANCE OF PROFIT, AND (2) RISK OF LOSS.

31. ASSUMING, BUT NOT AGREEING, THAT MR. BURWELL IS AN EMPLOYEE OF THE RESPONDENT, THE EVIDENCE WOULD, IN MY OPINION, LEAD TO THE IN-ESCAPABLE CONCLUSION THAT HE WOULD BE AN EMPLOYEE EXCLUDED FROM THE ONTARIO LABOUR RELATIONS ACT UNDER SECTION 1 (3)(B) OF THE ACT. MR. BURWELL HIRED CORKUM, ESTABLISHED HIS RATE OF PAY, TELLS HIM WHAT TO DO (IE: WHAT TRAILERS TO PICK UP), INSTRUCTS CORKUM TO COMMENCE WORK (AND WHEN) AT MR. BURWELL'S FATHER'S PROPERTY WHERE MR. BURWELL KEEPS HIS TRUCK. (REFERENCE TO PARAGRAPHS 170, 171, 174, 175 AND 176 OF THE EXAMINER'S REPORT). I REFER TO GENERAL DRIVERS, WAREHOUSEMEN AND HELPERS, LOCAL 979 VS. ARROW TRANSIT LINES LTD. - CLLR CASE (16,086). IN CONCLUSION, I WOULD HAVE FOUND THAT THERE IS AN IDENTICAL RELATIONSHIP BETWEEN THE RESPONDENT AND MESSRS. TIMPANY AND BURWELL. I WOULD ALSO FIND THAT MR. CARL JONES IS NOT AN EMPLOYEE OF THE RESPONDENT, BUT IS IN FACT AN EMPLOYEE OF MR. TIMPANY.

1997-72-JD: FRANCON DIVISION OF CANFARGE LTD. (COMPLAINANT) V. LOCAL 93 UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (RESPONDENT #1) V. LOCAL 527 LABOURERS INTERNATIONAL UNION OF NORTH AMERICA (RESPONDENT #2) V. LOUIS DONOLO INC. (RESPONDENT #3).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS H. ADE AND E. BOYER.

APPEARANCES AT THE HEARING: R. LACHAPELLE, Q.C., AND J. M. LOIGNON FOR THE COMPLAINANT; A. LALONDE FOR RESPONDENT #1; F. MANONI FOR RESPONDENT #2; C. G. HEYWOOD FOR RESPONDENT #3.

DECISION OF THE BOARD: MAY 23, 1972.

1. THIS IS A COMPLAINT UNDER SECTION 81 OF THE LABOUR RELATIONS ACT.
2. THE COMPLAINANT IS REQUESTING THAT THE BOARD MAKE AN INTERIM ORDER WITH RESPECT TO AN ASSIGNMENT OF WORK WHICH IS IN DISPUTE BETWEEN THE RESPONDENT TRADE UNIONS.
3. THE BOARD IS SATISFIED THAT A STRIKE IS IMMINENT BY REASON OF THE ASSIGNMENT OF WORK WHICH IS THE SUBJECT MATTER OF THE DISPUTE.
4. HAVING CONSIDERED THE REPRESENTATIONS OF THE PARTIES, THE BOARD DEEMS IT ADVISABLE IN ALL THE CIRCUMSTANCES TO MAKE THE INTERIM ORDER SET OUT BELOW:

THE COMPLAINANT SHALL ASSIGN ALL OF THE WORK INVOLVED IN THE CONSTRUCTION, ASSEMBLY AND SETTING OF WOOD AND METAL FORMS FOR CURBS AND CONCRETE ROAD BASE ON THE DEPARTMENT OF NATIONAL DEFENCE HEADQUARTERS BUILDING PROJECT AT OTTAWA TO PERSONS REPRESENTED BY LOCAL 527 LABOURERS INTERNATIONAL UNION OF NORTH AMERICA.

THIS ORDER SHALL BECOME EFFECTIVE FORTHWITH AND SHALL REMAIN IN EFFECT UNTIL SUCH TIME AS THE BOARD ISSUES A FURTHER DIRECTION.

1588-71-R: MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES LOCAL UNION No. 647, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) v. GRANNY'S COUNTRY-OVEN BAKERY LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND P. J. O'KEEFFE.

DECISION OF THE BOARD: MAY 24, 1972.

1. AN ISSUE HAS ARISEN BETWEEN THE PARTIES IN THIS MATTER CONCERNING THE LOCATION FOR THE CONTINUATION OF THE EXAMINER'S INQUIRY DIRECTED BY THE BOARD IN ITS DECISION OF MARCH 1, 1972 IN THIS MATTER. IT WOULD APPEAR THAT THREE HEARINGS WERE HELD AT THE BOARD'S OFFICES IN TORONTO AT WHICH HEARINGS THE APPLICANT CALLED CERTAIN WITNESSES. THE RESPONDENT HAS NOW INDICATED THAT IT WISHES TO CALL A SUBSTANTIAL NUMBER OF WITNESSES, ALL OF WHOM ARE EMPLOYED AT THE RESPONDENT'S PLANT AT AURORA AND THE RESPONDENT ACCORDINGLY REQUESTS THE BOARD TO DIRECT THAT THE EXAMINER'S HEARINGS IN THIS MATTER BE CONTINUED AT ITS PLANT AT AURORA IN ORDER TO MINIMIZE THE INTERFERENCE WITH THE RESPONDENT'S PRODUCTION WHICH WILL BE OCCASIONED WHEN THE RESPONDENT'S WITNESSES ARE REQUIRED TO LEAVE THEIR EMPLOYMENT FOR THE PURPOSE OF THE EXAMINATION IN THIS MATTER. THE APPLICANT HAS OBJECTED TO THE CHANGE IN THE LOCATION OF THE HEARINGS PROPOSED BY THE RESPONDENT PRIMARILY ON THE GROUNDS THAT THE APPLICANT WAS REQUIRED TO BRING ITS WITNESSES FROM AURORA TO TORONTO FOR THE EARLIER HEARINGS IN THIS MATTER. THE APPLICANT HAS NOT SUGGESTED THAT THE CONTINUATION OF THE EXAMINER'S HEARINGS AT AURORA WOULD UNDULY PREJUDICE THE APPLICANT OR IN ANY WAY INTERFERE WITH THE EXPEDITIOUS COMPLETION OF THE EXAMINER'S INQUIREY.

2. IT IS THE BOARD'S NORMAL PROCEDURE TO CONDUCT EXAMINER'S INQUIRIES AT THE PREMISES OF THE EMPLOYER WHERE POSSIBLE UNLESS OTHERWISE AGREED TO. SINCE THE RESPONDENT'S PROPOSAL TO CONTINUE THE HEAR-

INGS AT THE RESPONDENT'S PREMISES IN AURORA IS IN ACCORD WITH THE BOARD'S USUAL PRACTICE, THE BOARD ACCORDINGLY FINDS THAT THE RESPONDENT'S PROPOSAL IS BOTH JUSTIFIED AND REASONABLE. THE BOARD THEREFORE DIRECTS THAT THE EXAMINER COMPLETE HIS INQUIRY IN THIS MATTER AT HEARINGS TO BE CONDUCTED AT THE RESPONDENT'S PREMISES AT AURORA.

587-71-U: RETAIL AND FOOD EMPLOYEES LOCAL UNION 175, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (COMPLAINANT) v. SUN PARLOUR GREENHOUSE GROWERS' CO-OPERATIVE LIMITED, ARMSTRONG PRODUCE COMPANY LIMITED, A.M.C. PRODUCE SHIPPERS INCORPORATED, MASTRONARDI PRODUCE LIMITED, GARDEN ACRE SALES, AN AGENCY OF ONTARIO GREENHOUSE PRODUCERS MARKETING BOARD (RESPONDENTS).

BEFORE: O.B. SHIME, VICE-CHAIRMAN, AND BOARD MEMBERS J.D. BELL AND A. MAIN.

APPEARANCES AT THE HEARING: IAN SCOTT, KENNETH A. DANSON AND W. HANLEY FOR THE COMPLAINANT; DAN BALZER FOR SUN PARLOUR GREENHOUSE GROWERS' CO-OPERATIVE LIMITED; NO ONE APPEARING FOR ARMSTRONG PRODUCE COMPANY LIMITED; G.J. SMITH FOR A.M.C. PRODUCE SHIPPERS INCORPORATED; NO ONE APPEARING FOR MASTRONARDI PRODUCE LIMITED; NO ONE APPEARING FOR GARDEN ACRE SALES, AN AGENCY OF ONTARIO GREENHOUSE PRODUCERS MARKETING BOARD.

DECISION OF THE BOARD: MAY 24, 1972.

1. IN THIS CASE A MAJORITY OF THE BOARD FOUND THAT THE RESPONDENT, SUN PARLOUR GREENHOUSE GROWERS' CO-OPERATIVE LIMITED (HEREINAFTER REFERRED TO AS "SUN PARLOUR") HAD VIOLATED SECTION 58(A) OF THE LABOUR RELATIONS ACT BY REFUSING TO CONTINUE TO EMPLOY THE AGGRIEVED EMPLOYEES AND THAT THE RESPONDENT A.M.C. PRODUCE SHIPPERS INCORPORATED (HEREINAFTER REFERRED TO AS "A.M.C.") HAD ALSO VIOLATED SECTION 58(A) BY REFUSING TO EMPLOY THE AGGRIEVED EMPLOYEES BECAUSE THEY WERE MEMBERS OF A TRADE UNION OR WERE EXERCISING THEIR RIGHTS UNDER THE ACT.

2. THE MAJORITY OF THE BOARD FURTHER ORDERED THAT THE EMPLOYEES WERE ENTITLED TO COMPENSATION FROM THE RESPONDENTS IN AN AMOUNT TO BE DETERMINED BY THE PARTIES, AND FAILING AGREEMENT THE BOARD SHOULD REMAIN SEIZED OF THE MATTER.

3. THE BOARD FURTHER ORDERED THE AGGRIEVED EMPLOYEES TO BE FORTHWITH REINSTATED BY THE RESPONDENT, SUN PARLOUR, TO THEIR FORMER EMPLOYMENT OR IN THE ALTERNATIVE THE RESPONDENT, A.M.C. WAS DIRECTED TO EMPLOY THE AGGRIEVED EMPLOYEES.

4. THE PARTIES WERE UNABLE TO AGREE AS TO THE MATTER OF COMPENSATION ALTHOUGH THEY HAVE REINSTATED THREE OF THE FOUR EMPLOYEES. IN

OUR VIEW THE EMPLOYEES ARE TO BE PLACED IN THE SAME POSITION THAT THEY WERE IN PRIOR TO THE VIOLATIONS BY THE RESPONDENTS OF THE LABOUR RELATIONS ACT. THAT IS, THEY ARE TO BE "MADE WHOLE".

5. ACCORDINGLY, HAVING REGARD TO THE EVIDENCE AND TO THE SUBMISSIONS OF THE PARTIES THE BOARD DETERMINES THAT THE AGGRIEVED EMPLOYEES ARE ENTITLED TO COMPENSATION AS FOLLOWS:

PETER BORDATO

MR. BORDATO IS TO BE COMPENSATED AT THE RATE OF \$178.84 PER WEEK FROM JUNE 14, 1971 UNTIL APRIL 9, 1972, THE DATE OF HIS REINSTATEMENT : \$7,690.12

ON APRIL 9, 1972, HE WAS REINSTATED AT \$110.00 PER WEEK. HE IS THEREFORE TO RECEIVE THE DIFFERENCE OF \$68.84 PER WEEK UNTIL THE DATE OF THE HEARING WHICH WAS MAY 9, 1972 : 289.13

MR. BORDATO IS FURTHER TO RECEIVE HIS CHRISTMAS BONUS FOR THE YEAR 1971 IN THE AMOUNT OF \$178.84 AND VACATION CREDIT OR PAY FOR THE PERIOD COMMENCING JANUARY 1, 1972 UNTIL MAY 9, 1972 : 178.84

JAMES STENGER

MR. STENGER IS TO BE COMPENSATED AT THE RATE OF \$185.00 PER WEEK FROM JUNE 14, 1971 UNTIL FEBRUARY 21, 1972, THE DATE OF HIS REINSTATEMENT : \$6,660.00

ON FEBRUARY 21, 1972, HE WAS REINSTATED AT \$110.00 PER WEEK. HE IS THEREFORE TO RECEIVE THE DIFFERENCE OF \$75.00 PER WEEK UNTIL THE DATE OF THE HEARING WHICH WAS MAY 9, 1972 : 840.00

MR. STENGER IS FURTHER TO RECEIVE HIS CHRISTMAS BONUS FOR THE YEAR 1971 IN THE AMOUNT OF \$185.00 AND VACATION CREDIT OR PAY FOR THE PERIOD COMMENCING JANUARY 1, 1972 UNTIL MAY 9, 1972 : 185.00

MRS. CATHARINE HOTZON

MRS. HOTZON IS TO BE COMPENSATED AT THE RATE OF \$125.00 PER WEEK FROM JUNE 14, 1971 TO MARCH 6, 1972, THE DATE OF HER REINSTATEMENT : \$4,750.00

ON MARCH 6, 1972, SHE WAS REINSTATED AT \$70.00 PER WEEK. SHE IS THEREFORE TO RECEIVE THE DIFFERENCE OF \$55.00 PER WEEK UNTIL THE DATE OF THE HEARING WHICH WAS MAY 9, 1972 : 506.00

MRS. HOTZON IS FURTHER TO RECEIVE HER CHRISTMAS BONUS FOR THE YEAR 1971 IN THE AMOUNT OF \$125.00 AND VACATION CREDIT OR PAY FOR THE PERIOD COMMENCING JANUARY 1, 1972 UNTIL MAY 9, 1972 : 125.00

ROY CLUTE

MR. CLUTE IS TO BE COMPENSATED AT THE RATE OF \$125.00 PER WEEK FROM JUNE 14, 1971 TO MAY 9, 1972, THE DATE OF THE HEARING : \$5,900.00

MR. CLUTE IS FURTHER TO RECEIVE HIS CHRISTMAS BONUS FOR THE YEAR 1971 IN THE AMOUNT OF \$125.00 AND VACATION CREDIT OR PAY FOR THE PERIOD COMMENCING JANUARY 1, 1972 UNTIL MAY 9, 1972 : 125.00

HOWEVER, MR. CLUTE IN MITIGATION HAS EARNED THE SUM OF \$650.00 AND THE RESPONDENTS ARE TO BE GIVEN CREDIT FOR THAT AMOUNT

6. FROM THE AFORESAID AMOUNTS THE RESPONDENTS ARE ENTITLED TO MAKE THE FOLLOWING DEDUCTIONS:

- 1) PAYMENT PROVIDED TO THE EMPLOYEE ON JUNE 14, 1972.
- 2) THE DEDUCTIONS THAT IT HAD BEEN THE PRACTICE OF THE RESPONDENTS

TO MAKE AT THE TIME THE EMPLOYEES
WERE TERMINATED, INCOME TAX, ETC.

7. THE BOARD WILL CONTINUE TO REMAIN SEIZED OF THE MATTER SHOULD ANY FURTHER PROBLEM ARISE WITH RESPECT TO THE IMPLEMENTATION OF OUR DECISION AND TO THE REINSTATEMENT OF ROY CLUTE.

1871-72-U: LOCAL UNION 46 OF THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA (APPLICANT) V. AUTOMATIC FUELS LIMITED, DEPENDABLE SERVICE (RESPONDENTS).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS F. W. MURRAY AND P. J. O'KEEFFE.

APPEARANCES AT THE HEARING: LAURENCE C. ARNOLD AND DAVID CLARK FOR THE APPLICANT; R. A. WERRY, J. B. MCLEAN, R. J. CROMPTON AND S. C. BERNARDO FOR THE RESPONDENTS.

DECISION OF J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS P. J. O'KEEFFE: MAY 24, 1972.

1. THE APPLICANT WAS CERTIFIED AS BARGAINING AGENT FOR CERTAIN EMPLOYEES OF THE RESPONDENT AUTOMATIC FUELS LIMITED UNDER THE PROVISIONS OF THE LABOUR RELATIONS ACT RELATING TO THE CONSTRUCTION INDUSTRY (SEE AUTOMATIC FUELS LIMITED CASE, OLRB MONTHLY REPORT, APRIL 1966, P. 22). THE APPLICANT HAS APPLIED FOR RELIEF UNDER THE PROVISIONS OF SECTION 123 OF THE ACT. SECTION 123(3) OF THE ACT READS:

WHERE ON THE COMPLAINT OF AN INTERESTED PERSON, TRADE UNION, COUNCIL OF TRADE UNIONS OR EMPLOYERS' ORGANIZATION THE BOARD IS SATISFIED THAT AN EMPLOYER OR EMPLOYERS' ORGANIZATION CALLED OR AUTHORIZED OR THREATENED TO CALL OR AUTHORIZE AN UNLAWFUL LOCK-OUT OR LOCKED OUT OR THREATENED TO LOCK OUT EMPLOYEES OR THAT AN OFFICER, OFFICIAL OR AGENT OF AN EMPLOYER OR EMPLOYERS' ORGANIZATION COUNSELLED OR PROCURED OR SUPPORTED OR ENCOURAGED AN UNLAWFUL LOCK-OUT OR THREATENED AN UNLAWFUL LOCK-OUT, IT MAY DIRECT WHAT ACTION IF ANY A PERSON, EMPLOYEE, EMPLOYER, EMPLOYERS' ORGANIZATION, TRADE UNION OR COUNCIL OF TRADE UNIONS AND THEIR OFFICERS, OFFICIALS OR AGENTS SHALL DO OR REFRAIN FROM DOING WITH RESPECT TO THE UNLAWFUL LOCK-OUT OR THE THREAT OF AN UNLAWFUL LOCK-OUT.

2. THE FACTS OF THIS CASE ARE AS FOLLOWS. THE APPLICANT AND AUTOMATIC FUELS LIMITED WERE PARTIES TO A COLLECTIVE AGREEMENT COVERING "ALL EMPLOYEES ENGAGED IN OIL BURNER SERVICE AND INSTALLATION..." WHICH EXPIRED ON JULY 31, 1971. AFTER THE APPLICANT SERVED NOTICE TO BARGAIN FOR A RENEWAL OF THE COLLECTIVE AGREEMENT, BECAUSE OF CONDITIONS IN THE INDUSTRY AT THE TIME, THE PARTIES AGREED TO POSTPONE BARGAINING FOR RENEWAL OF THEIR AGREEMENT UNTIL A LATER DATE. AT THE HEARING IN THIS MATTER IT WAS AGREED THAT THE APPLICANT HAS NOT ABANDONED ITS BARGAINING RIGHTS AND ALSO THAT CONCILIATION SERVICES HAD NOT BEEN APPLIED FOR PRIOR TO THE MAKING OF THIS APPLICATION.

3. ON OCTOBER 22, 1971 THE APPLICANT REQUESTED THAT NEGOTIATIONS FOR A RENEWAL OF THE COLLECTIVE AGREEMENT BE RESUMED. ALTHOUGH THE COMPANY AGREED TO CONTACT THE UNION TO ARRANGE A MEETING, NO NEGOTIATION MEETINGS HAVE BEEN HELD SINCE THAT TIME.

4. ON MARCH 30, 1972 ALL THE BARGAINING UNIT EMPLOYEES OF THE RESPONDENT AUTOMATIC FUELS LIMITED WERE SERVED WITH A TERMINATION NOTICE IN A FORM SIMILAR TO THE FOLLOWING:

THIS LETTER IS TO NOTIFY YOU THAT YOUR SERVICES WILL NO LONGER BE REQUIRED BY AUTOMATIC FUELS LIMITED.

UNDER THE EMPLOYMENT STANDARD ACT, YOU ARE ENTITLED TO EIGHT (8) WEEKS NOTICE OF TERMINATION AND THEREFORE THE TERMINATION OF YOUR EMPLOYMENT WITH AUTOMATIC FUELS LIMITED WILL BECOME EFFECTIVE ON THE TWENTY-SEVENTH (27TH) DAY OF MAY 1972.

BECAUSE OF THE LENGTH OF SERVICE OF THE VARIOUS EMPLOYEES IN THE BARGAINING UNIT AND THE REQUIREMENTS OF THE EMPLOYMENT STANDARDS ACT, THE LENGTH OF NOTICE GIVEN TO EMPLOYEES VARIES BUT IN ALL OTHER RESPECTS THE TERMINATION NOTICES WERE THE SAME.

5. AFTER THE TERMINATION NOTICES WERE SERVED THE EMPLOYEES WERE ADVISED THAT AUTOMATIC FUELS LIMITED WAS DIVESTING ITSELF OF THAT PART OF ITS BUSINESS WHICH INVOLVED THE INSTALLATION AND SERVICE OF OIL BURNERS AND INTENDED TO RESTRICT ITSELF TO THE SALE AND DELIVERY OF FUEL OIL. THE OIL BURNER INSTALLATION AND SERVICE PORTION OF ITS BUSINESS WAS TO BE TRANSFERRED TO DEPENDABLE SERVICE WHICH WAS A REGISTERED SOLE PROPRIETORSHIP UNDER WHICH NEAL PETROLEUM COMPANY LIMITED INTENDED TO CARRY ON THE OIL BURNER INSTALLATION AND SERVICE BUSINESS. AUTOMATIC FUELS LIMITED IS A SUBSIDIARY OF NEAL PETROLEUM COMPANY LIMITED AND IT WAS AGREED THAT SOME OF THE DIRECTORS OF THE TWO COMPANIES WERE COMMON. IT WAS FURTHER AGREED THAT THE TRANSFER OF THE OIL BURNER INSTALLATION AND SERVICE BUSINESS WILL BE MERELY AN INTER-COMPANY TRANSACTION, HOWEVER, IT WAS FUR-

THER AGREED THAT THE TRANSACTION WILL CONSTITUTE A SALE OF A PART OF A BUSINESS BY AUTOMATIC FUELS LIMITED TO DEPENDABLE SERVICE WITHIN THE MEANING OF SECTION 55 OF THE LABOUR RELATIONS ACT.

6. THE REASONS FOR TRANSFERRING THE OIL BURNER INSTALLATION AND SERVICE BUSINESS TO DEPENDABLE SERVICE WERE TWOFOLD. AUTOMATIC FUELS LIMITED HAD ENGAGED IN THE BUSINESS OF THE SALE AND DELIVERY OF FUEL OIL AND ALSO IN THE OIL BURNER INSTALLATION AND SERVICE BUSINESS. ITS OIL BURNER INSTALLATION AND SERVICE BUSINESS HAD BEEN CARRIED ON PARTLY BY ITS OWN EMPLOYEES AND PARTLY BY USING THE EMPLOYEES OF TWO INDEPENDENT CONTRACTORS. THE INDEPENDENT CONTRACTORS HAD A TOTAL OF SIX OR SEVEN EMPLOYEES WHO PERFORMED OIL BURNER INSTALLATION AND SERVICE. NEAL PETROLEUM COMPANY LIMITED, THE PARENT COMPANY, WAS DISSATISFIED WITH THE HIGH COST OF OPERATING THE OIL BURNER INSTALLATION AND SERVICE BUSINESS CARRIED ON BY AUTOMATIC FUELS LIMITED AND AFTER CONDUCTING A STUDY DISCOVERED THAT THE PORTION OF THE BUSINESS WHICH HAD BEEN HANDLED BY THE INDEPENDENT SUBCONTRACTORS WAS LESS EXPENSIVE THAN THE PORTION CARRIED ON BY AUTOMATIC FUELS LIMITED EMPLOYEES. IN ADDITION, NEAL PETROLEUM COMPANY LIMITED WANTED TO ESTABLISH A SEPARATE ORGANIZATION TO CARRY ON THE INSTALLATION AND SERVICE BUSINESS SO THAT THESE SERVICES COULD BE UTILIZED NOT ONLY BY THE CUSTOMERS OF AUTOMATIC FUELS LIMITED BUT ALSO BY THE CUSTOMERS OF OTHER INDEPENDENT COMPANIES TO WHOM NEAL PETROLEUM COMPANY LIMITED SOLD FUEL OIL. IN THIS WAY IT WAS HOPED THAT THE SEPARATE ORGANIZATION WHICH WOULD BE ENGAGED SOLELY IN THE BUSINESS OF OIL BURNER INSTALLATION AND SERVICE WOULD MINIMIZE THE FEAR ON THE PART OF THE INDEPENDENT COMPANIES THAT THEY WOULD LOSE THEIR CUSTOMERS TO ANOTHER COMPANY SUCH AS AUTOMATIC FUELS LIMITED WHO OPERATED BOTH FUEL OIL SALES AND DELIVERY SERVICE AS WELL AS OIL BURNER INSTALLATION AND SERVICE BUSINESS SINCE DEPENDABLE SERVICE WOULD NOT BE ENGAGED IN THE BUSINESS OF SELLING FUEL OIL.

7. THE MANAGER OF DEPENDABLE SERVICE FRANKLY ADMITTED THAT HE HOPED TO COMMENCE OPERATIONS SHORTLY AFTER MAY 1ST AND TO OPERATE THE BUSINESS OF DEPENDABLE SERVICE SOLELY BY MEANS OF INDEPENDENT CONTRACTORS RATHER THAN EMPLOYEES. TO THIS END HE HAD INVITED THE EMPLOYEES OF AUTOMATIC FUELS LIMITED, WHO HAD BEEN GIVEN THEIR NOTICE OF TERMINATION, TO SIGN AN AGREEMENT WITH DEPENDABLE SERVICE. WHILE THE FINAL FORM OF THE AGREEMENT HAD NOT BEEN SETTLED AT THE TIME OF THE HEARING IN THIS MATTER, IT WAS ACKNOWLEDGED THAT THE AGREEMENT WOULD BE IN SUBSTANTIALLY THE SAME FORM AS EXHIBIT 5 WHICH WAS A COPY OF A TYPE OF AGREEMENT THE EMPLOYEES WERE ADVISED THAT THEY WOULD BE ASKED TO SIGN. INDEED, THERE WAS SOME EVIDENCE THAT EMPLOYEES HAD ALREADY SIGNED THE AGREEMENT IN THE FORM OF EXHIBIT 5 WITH THE UNDERSTANDING THAT AMENDMENTS MIGHT BE MADE. THIS AGREEMENT STIPULATED THAT THE "CONTRACTOR" WOULD BE AN "INDEPENDENT CONTRACTOR" WHO WOULD WORK EXCLUSIVELY FOR DEPENDABLE SERVICE WITHIN A

DEFINITE TERRITORY AND WOULD PERFORM SERVICE AND INSTALLATION WORK FOR OR ON BEHALF OF CUSTOMERS OF DEPENDABLE SERVICE. THE ACTUAL FUNCTIONS TO BE PERFORMED FOR DEPENDABLE SERVICE WOULD BE THE SAME TYPE OF FUNCTIONS THAT THEY CURRENTLY PERFORMED FOR AUTOMATIC FUELS LIMITED. THE AMOUNT OF PAYMENT THEY WOULD RECEIVE FOR SUCH SERVICES WAS CHANGED AND THE METHOD VARIED TO SOME DEGREE.

8. HAVING CONSIDERED ALL THE EVIDENCE BEFORE US AND THE REPRESENTATIONS OF THE PARTIES, WE FIND THAT THE TRANSFER OF THE OIL BURNER INSTALLATION AND SERVICE BUSINESS TO DEPENDABLE SERVICE WILL CONSTITUTE A SALE OF PART OF THE BUSINESS BY AUTOMATIC FUELS LIMITED TO DEPENDABLE SERVICE WITHIN THE MEANING OF SECTION 55 OF THE ACT. SINCE NO COLLECTIVE AGREEMENT WAS IN OPERATION BETWEEN THE APPLICANT AND AUTOMATIC FUELS LIMITED AT THE TIME OF THE SALE OF THE BUSINESS, THE PROVISIONS OF SECTION 55(2) OF THE ACT ARE NOT APPLICABLE AND THEREFORE THERE IS NO COLLECTIVE AGREEMENT BINDING UPON DEPENDABLE SERVICE. HOWEVER, SINCE THE APPLICANT WAS "CERTIFIED AS BARGAINING AGENT" IT WILL BE ENTITLED TO GIVE TO DEPENDABLE SERVICE WRITTEN NOTICE OF ITS DESIRE TO BARGAIN PURSUANT TO THE PROVISIONS OF SECTION 55(3) OF THE ACT.

9. WE FURTHER FIND THAT SINCE AUTOMATIC FUELS LIMITED INTENDS TO DIVEST ITSELF OF THE OIL BURNER INSTALLATION AND SERVICE BUSINESS, IT WAS ENTITLED TO SERVE NOTICE OF TERMINATION OF EMPLOYMENT ON ITS EMPLOYEES. THERE IS NOTHING IN THE ACT TO PREVENT A COMPANY FROM DIVESTING ITSELF OF ALL OR A PORTION OF ITS BUSINESS AND INDEED SECTION 68 OF THE ACT CONTEMPLATES SUCH A SITUATION.

10. ALTHOUGH IT MAY BE ARGUED THAT DEPENDABLE SERVICE NEED NOT HIRE ALL THE AUTOMATIC FUELS LIMITED SERVICEMEN, IT IS NOTED THAT IT HAS OFFERED WORK TO THEM UNDER THE TERMS OF AN AGREEMENT REFERRED TO ABOVE. AGAIN, WHILE THE RESPONDENTS FRANKLY ADMITTED THAT DEPENDABLE SERVICE INTENDS TO CREATE AN INDEPENDENT CONTRACTOR RELATIONSHIP WITH ANY OF THE EMPLOYEES OF AUTOMATIC FUELS LIMITED WHO ARE WILLING TO SIGN THE AGREEMENT REFERRED TO ABOVE, WE ARE NOT SATISFIED THAT THE STEPS TAKEN BY DEPENDABLE SERVICE TO CONSTITUTE SUCH AN INDEPENDENT CONTRACTOR RELATIONSHIP WILL ACCOMPLISH THIS PURPOSE. THE RELATIONSHIP BETWEEN THE SERVICEMEN AND DEPENDABLE SERVICE IS SUBSTANTIALLY DIFFERENT FROM THE RELATIONSHIP WHICH EXISTS BETWEEN AUTOMATIC FUELS LIMITED AND ITS SUBCONTRACTORS. AS INDICATED ABOVE, THE SUBCONTRACTORS OF AUTOMATIC FUELS LIMITED THEMSELVES EMPLOY SERVICEMEN. THE PERSONS WHO PERFORM THE INSTALLATION AND SERVICE WORK ON BEHALF OF THE SUBCONTRACTORS ARE THE EMPLOYEES OF THE SUBCONTRACTORS. ACCORDINGLY, ALL THE PERSONS WHO PERFORM THE INSTALLATION AND SERVICE WORK FOR AUTOMATIC FUELS LIMITED WERE EITHER EMPLOYEES OF AUTOMATIC FUELS LIMITED OR EMPLOYEES OF ITS SUBCONTRACTORS.

11. IN THE INSTANT CASE DEPENDABLE SERVICE HAS OFFERED A CONTRACT TO THE EMPLOYEES OF AUTOMATIC FUELS LIMITED WHEREBY EACH OF THE SERVICEMEN WILL HAVE A DIRECT CONTRACTUAL RELATIONSHIP WITH DEPENDABLE SERVICE WITHOUT THE INTERVENTION OF A THIRD PARTY. IN VIEW OF THE EXCLUSIVELY OF THEIR RELATIONSHIP WITH DEPENDABLE SERVICE AND THE FACT THAT THE WORK THEY WILL PERFORM SOLELY FOR DEPENDABLE SERVICE IS FOR AN OPEN-ENDED PERIOD OF TIME AND HAVING REGARD FOR THE DECISION OF THE BOARD IN THE AUTOMATIC FUELS LIMITED CASE, OLRB MONTHLY REPORT, APRIL 1966, P. 22, AND A RECENT DECISION OF THE BOARD IN THE ERB TRANSPORT LIMITED CASE, BOARD FILE NO. 946-71-R, APRIL 27, 1972, AND THE CASES THEREIN REFERRED TO, WE FIND ON THE EVIDENCE NOW BEFORE US THAT THE SERVICEMEN WHO WILL PERFORM WORK FOR DEPENDABLE SERVICE UNDER AN AGREEMENT SIMILAR TO THAT IN EXHIBIT 5 IN THIS MATTER WILL BE EMPLOYEES OF DEPENDABLE SERVICE RATHER THAN INDEPENDENT CONTRACTORS. THE EXTENT OF THE NATURE OF THE CONTROL OVER THE "CONTRACTORS" UNDER THE PROPOSED AGREEMENT DEPRIVES THE CONTRACTORS OF THE INDEPENDENCE NECESSARY FOR A TRUE ENTREPRENEURIAL RELATIONSHIP. THEIR EARNINGS WILL BE IN THE NATURE OF WAGES ON A PIECE-WORK BASIS RATHER THAN IN THE NATURE OF PROFITS FROM CARRYING ON AN INDEPENDENT BUSINESS. THE AGREEMENT BETWEEN THE CONTRACTORS AND DEPENDABLE SERVICE IS OPEN-ENDED IN DURATION AND NOT MERELY FOR THE PURPOSE OF A SPECIFIC PROJECT OR JOB. THE "CONTRACTORS" CANNOT HOLD THEMSELVES OUT TO THE PUBLIC AT LARGE AS OIL BURNER SERVICEMEN SO LONG AS THEIR RELATIONSHIP WITH DEPENDABLE SERVICE EXISTS SINCE THEY MUST RESTRICT THEIR WORK TO DEPENDABLE SERVICE.

12. WE FURTHER FIND THAT SINCE THE APPLICANT HAS YET TO SERVE DEPENDABLE SERVICE WITH A NOTICE TO BARGAIN UNDER SECTION 55(3) OF THE ACT, THE FACT THAT DEPENDABLE SERVICE MAY CHANGE THE TERMS AND CONDITIONS OF EMPLOYMENT OF THE SERVICEMEN PRIOR TO THE SERVICE OF SUCH A NOTICE TO BARGAIN DOES NOT CONTRAVENE THE PROVISIONS OF SECTION 70 OF THE ACT SINCE THAT SECTION ONLY APPLIES WHEN NOTICE TO BARGAIN HAS BEEN GIVEN.

13. IN THESE CIRCUMSTANCES, WE FIND THAT THERE IS NOT SUFFICIENT EVIDENCE FOR US TO DETERMINE THAT THE RESPONDENTS HAVE ENGAGED IN A LOCK-OUT OF THE EMPLOYEES WITH WHOM WE ARE HERE CONCERNED. AS INDICATED EARLIER, AUTOMATIC FUELS LIMITED HAD THE RIGHT TO SERVE TERMINATION NOTICES ON ITS EMPLOYEES SINCE IT INTENDED TO DIVEST ITSELF OF ITS OIL BURNER INSTALLATION AND SERVICE BUSINESS. SUCH TERMINATION NOTICES ARE A NORMAL PROCEDURAL STEP AND CANNOT BE SAID TO CONSTITUTE A LOCK-OUT WITHIN THE MEANING OF SECTION 1(1)(1) OF THE LABOUR RELATIONS ACT. AGAIN, ALL THE EMPLOYEES WHO RECEIVED NOTICE OF TERMINATION WERE OFFERED EMPLOYMENT WITH DEPENDABLE SERVICE, ALTHOUGH UNDER DIFFERENT CONDITIONS. THIS AGAIN WAS SOMETHING THAT DEPENDABLE SERVICE WAS ENTITLED TO DO FOR THE REASONS SET OUT ABOVE AND THE FACT THAT EMPLOYMENT WAS OFFERED TO THE EMPLOYEES IN THIS MANNER CANNOT BE SAID TO CONSTITUTE A LOCK-OUT

OR A THREAT OF A LOCK-OUT WITHIN THE MEANING OF SECTION 1(1)(1) OF THE ACT SINCE IT DID NOT IN ANY WAY DEPRIVE THE EMPLOYEES OF THEIR RIGHT TO MEMBERSHIP IN OR REPRESENTATION BY THE APPLICANT UNION OR ANY OTHER RIGHT UNDER THE ACT.

14. ALTHOUGH THE APPLICANT HAS THE RIGHT TO SERVE NOTICE TO BARGAIN UNDER SECTION 55(3) AND DEPENDABLE SERVICE WILL BE REQUIRED TO BARGAIN ON ALL TERMS AND CONDITIONS OF EMPLOYMENT, THERE IS NOTHING BEFORE US TO INDICATE THAT DEPENDABLE SERVICE HAS CONTRAVENED ANY OF THE PROVISIONS OF THE ACT AT THE TIME THIS APPLICATION WAS MADE.

15. THE APPLICANT URGED THE BOARD TO FIND THAT AUTOMATIC FUELS LIMITED AND DEPENDABLE SERVICE SHOULD BE FOUND TO CONSTITUTE ONE EMPLOYER UNDER THE PROVISIONS OF SECTION 1(1)(4) OF THE ACT. IN VIEW OF THE FACT THAT AT THE TIME THIS APPLICATION WAS MADE AND INDEED EVEN AT THE TIME OF THE HEARING IN THIS MATTER AUTOMATIC FUELS LIMITED WAS STILL CARRYING ON ITS OIL BURNER INSTALLATION AND SERVICE BUSINESS AND THAT DEPENDABLE SERVICE HAD YET TO ENGAGE IN THESE OPERATIONS, WE FIND THAT THE EVIDENCE FALLS SHORT OF ESTABLISHING THAT THE TWO ENTITIES WERE CARRYING ON A COMMON BUSINESS AS ONE EMPLOYER. ON THE CONTRARY, THE EVIDENCE CLEARLY ESTABLISHED THAT ONCE DEPENDABLE SERVICE COMMENCES THE OIL BURNER INSTALLATION AND SERVICE BUSINESS, AUTOMATIC FUELS LIMITED WILL HAVE COMPLETELY DIVESTED ITSELF OF THAT BUSINESS AND WILL NO LONGER BE AN EMPLOYER OF OIL BURNER SERVICEMEN.

16. FOR THE REASONS SET OUT ABOVE, WE FIND THAT THE APPLICANT HAS FAILED TO ESTABLISH THAT IT IS ENTITLED TO THE RELIEF REQUESTED UNDER SECTION 123 OF THE ACT. THE APPLICATION IS THEREFORE DISMISSED.

17. BOARD MEMBER F. W. MURRAY DISSENTS FROM THIS DECISION FOR REASONS TO BE GIVEN IN WRITING.

1479-71-U: THOMAS J. BERRY (COMPLAINANT) V. CIVIL SERVICE OF ONTARIO, INC. (RESPONDENT).

BEFORE: G. W. REED, Q.C., CHAIRMAN, AND BOARD MEMBERS E. BOYER AND H.J.F. ADE.

APPEARANCES AT THE HEARING: THOMAS J. BERRY FOR THE COMPLAINANT AND JAMES A. HODGSON FOR THE RESPONDENT.

DECISION OF THE BOARD: MAY 25, 1972.

1. THIS IS A COMPLAINT UNDER SECTION 79 OF THE LABOUR RELATIONS ACT. IN AN EARLIER DECISION DATED APRIL 12, 1972, THE BOARD DISMISSED THE COMPLAINT FOR THE REASONS SET OUT IN THE DECISION. THE COMPLAINANT

REQUESTED THE BOARD TO REVIEW ITS DECISION AND, AFTER CONSIDERING THE COMPLAINANT'S REQUEST, THE BOARD LISTED THE MATTER FOR HEARING TO ENABLE THE COMPLAINANT TO SHOW CAUSE WHY THE BOARD SHOULD INQUIRE FURTHER INTO THE MATTER BY MEANS OF A HEARING.

2. AT THE HEARING THE COMPLAINANT APPEARED IN PERSON AND THE RESPONDENT WAS REPRESENTED BY COUNSEL. AFTER CONSIDERING THE REPRESENTATIONS OF THE PARTIES, IT IS CLEAR THAT THE BOARD'S DECISION DATED APRIL 12, 1972 WAS BASED ON CERTAIN ASSUMPTIONS ABOUT WHICH THERE IS CLEARLY A DISPUTE BETWEEN THE PARTIES. IN THESE CIRCUMSTANCES, WE ARE OF THE OPINION THAT OUR DECISION DATED APRIL 12, 1972 CANNOT STAND. WHILE WE APPRECIATE THE SIGNIFICANCE OF THE ARGUMENTS ADDRESSED TO US BY COUNSEL FOR THE RESPONDENT, WE ARE NEVERTHELESS OF THE OPINION THAT NO FURTHER DECISION ON THE MERITS SHOULD BE RENDERED BY THE BOARD UNTIL THE PARTIES HAVE HAD AN OPPORTUNITY TO ADDUCE THEIR EVIDENCE BEFORE THE BOARD. IN THESE CIRCUMSTANCES AND PURSUANT TO ITS POWER UNDER SECTION 95 OF THE LABOUR RELATIONS ACT, THE BOARD HEREBY REVOKES ITS DECISION IN THIS MATTER DATED APRIL 12, 1972.

3. HAVING REGARD TO THE ABOVE CONSIDERATIONS, WE ARE OF THE OPINION THAT THE BOARD SHOULD INQUIRE INTO THE COMPLAINT WITH RESPECT TO THOMAS J. BERRY BY MEANS OF A FURTHER HEARING BY THE BOARD.

4. THE APPROPRIATE NOTICES OF HEARING WILL ISSUE.

1719-71-U: LORRAINE DENNING (COMPLAINANT) V. OIL, CHEMICAL & ATOMIC WORKERS INTERNATIONAL UNION AND ITS LOCAL 9-698 (RESPONDENT).

BEFORE: G.W. REED, Q.C., CHAIRMAN, AND BOARD MEMBERS E. BOYER AND H.J.F. ADE.

DECISION OF THE BOARD: MAY 25, 1972.

1. THIS IS A COMPLAINT MADE UNDER SECTION 79 OF THE LABOUR RELATIONS ACT IN WHICH THE COMPLAINANT ALLEGES THAT SHE HAS BEEN DISCRIMINATED AGAINST BY THE RESPONDENT UNIONS AND HAS NOT BEEN FAIRLY REPRESENTED BY THE UNIONS IN THAT THEY PERMITTED ANOTHER EMPLOYEE TO REMAIN ON THE DAY SHIFT WHEN THAT EMPLOYEE HAD LESS SHIFT SENIORITY THAN THE COMPLAINANT. THIS ACCOUNT OF HER COMPLAINT IS TAKEN FROM HER STATEMENT GIVEN TO THE FIELD OFFICER APPOINTED TO INQUIRE INTO THIS MATTER. THE COMPLAINANT IS ALLEGING THAT THE RESPONDENT UNIONS HAVE ACTED CONTRARY TO SECTION 60 OF THE ACT, WHICH PROVIDES:

60: A TRADE UNION OR COUNCIL OF TRADE UNIONS, SO LONG AS IT CONTINUES TO BE ENTITLED TO REPRESENT EMPLOYEES IN A BARGAINING UNIT,

SHALL NOT ACT IN A MANNER THAT IS ARBITRARY, DISCRIMINATORY OR IN BAD FAITH IN THE REPRESENTATION OF ANY OF THE EMPLOYEES IN THE UNIT, WHETHER OR NOT MEMBERS OF THE TRADE UNION OR OF ANY CONSTITUENT UNION OF THE COUNCIL OF TRADE UNIONS, AS THE CASE MAY BE.

2. THE COMPLAINANT ADMITS THAT THE OTHER EMPLOYEE HAS ONE MORE YEAR SENIORITY THAN HERSELF. THE POSITION OF THE RESPONDENT UNIONS AND HER EMPLOYER, CANADIAN INDUSTRIES LIMITED (NAMED AS AN INTERESTED PERSON IN THE COMPLAINT) IS THAT THERE IS NO SHIFT SENIORITY IN THE PLANT BUT ONLY PLANT-WIDE SENIORITY. IT WAS FOR THIS REASON THAT THE RESPONDENT UNIONS REFUSED TO LODGE A GRIEVANCE. THIS DECISION WAS REACHED ONLY AFTER DUE CONSIDERATION BY THE BARGAINING COMMITTEE, WHICH INCLUDED A MEETING WITH MANAGEMENT AT THE UNIONS' REQUEST TO DEAL SPECIFICALLY WITH THE COMPLAINANT'S CASE.

3. WE HAVE EXAMINED ARTICLE VII OF THE COLLECTIVE AGREEMENT BETWEEN THE COMPANY AND THE UNIONS, WHICH DEALS WITH SENIORITY. THAT ARTICLE DOES NOT PROVIDE FOR SHIFT SENIORITY OR DEPARTMENTAL SENIORITY, BUT ONLY PLANT-WIDE SENIORITY. THAT BEING THE CASE, WE ARE UNABLE TO APPRECIATE HOW THE COMPLAINANT HAS ANY CAUSE FOR ALLEGING A BREACH OF SECTION 60 ON THE PART OF THE RESPONDENT UNIONS. CLEARLY THE RESPONDENT UNIONS CONSIDERED THE COMPLAINANT'S COMPLAINT AND ARRIVED AT A DECISION WHICH, ON THE BASIS OF THE MATERIAL BEFORE US, SEEMS TO BE NOT OPEN TO CHALLENGE. IN THESE CIRCUMSTANCES, THERE IS IN OUR OPINION NOTHING BEFORE US WHICH SUGGESTS IN ANY WAY THAT THE UNIONS HAVE ACTED IN AN ARBITRARY MANNER. NOR CAN IT BE SAID THAT THEY HAVE ACTED IN A DISCRIMINATORY MANNER, SINCE THE BASIS OF THE ALLEGED DISCRIMINATION - SHIFT SENIORITY - DOES NOT EXIST UNDER THE COLLECTIVE AGREEMENT. FINALLY, THERE IS NOTHING IN THE MATERIAL BEFORE US TO SUGGEST BAD FAITH ON THE PART OF THE RESPONDENT UNIONS. WE NOTE IN PASSING THAT THE STATEMENTS GIVEN TO THE FIELD OFFICER BY THE UNIONS AND THE EMPLOYER WERE SHOWN TO THE COMPLAINANT'S SOLICITOR AND WERE NOT CHALLENGED BY HIM OR THE COMPLAINANT, WITH WHOM THE SOLICITOR CONSULTED AFTER READING THE STATEMENTS.

4. HAVING REGARD TO THE ABOVE CONSIDERATIONS, WE ARE OF THE OPINION THAT THE BOARD OUGHT NOT TO INQUIRE FURTHER INTO THE COMPLAINT BY MEANS OF A FORMAL HEARING. IF THE COMPLAINANT IS OF THE OPINION THAT THE BOARD HAS ERRED IN SOME MATERIAL WAY, IT IS ALWAYS OPEN TO HIM TO REQUEST THE BOARD TO RECONSIDER ITS DECISION UNDER SECTION 95(1) OF THE ACT.

5. THE COMPLAINT IS DISMISSED.

1818-72-U: MARTIN L. COSTELLO (COMPLAINANT) V. UNITED ELECTRICAL UNION 504 (RESPONDENT).

BEFORE: G. W. REED, Q.C., CHAIRMAN, AND BOARD MEMBERS E. BOYER AND H.J.F. ADE.

DECISION OF THE BOARD: MAY 25, 1972.

1. THIS IS A COMPLAINT MADE UNDER SECTION 79 OF THE LABOUR RELATIONS ACT. A FIELD OFFICER WAS APPOINTED AND HAS NOW SUBMITTED HIS REPORT. IN HIS STATEMENT TO THE FIELD OFFICER THE COMPLAINANT ALLEGES THAT THE RESPONDENT UNION HAS NOT REPRESENTED HIM SATISFACTORILY AND HAS ACTED ARBITRARILY AND IN BAD FAITH CONTRARY TO SECTION 60 OF THE ACT, WHICH PROVIDES:

60. A TRADE UNION OR COUNCIL OF TRADE UNIONS, SO LONG AS IT CONTINUES TO BE ENTITLED TO REPRESENT EMPLOYEES IN A BARGAINING UNIT, SHALL NOT ACT IN A MANNER THAT IS ARBITRARY, DISCRIMINATORY OR IN BAD FAITH IN THE REPRESENTATION OF ANY OF THE EMPLOYEES IN THE UNIT, WHETHER OR NOT MEMBERS OF THE TRADE UNION OR OF ANY CONSTITUENT UNION OF THE COUNCIL OF TRADE UNIONS, AS THE CASE MAY BE.

2. IT WOULD APPEAR FROM THE COMPLAINANT'S STATEMENT THAT HE WAS LAID OFF IN MAY OF 1971. HE SUBSEQUENTLY FILED A GRIEVANCE WHICH WAS ULTIMATELY PROCESSED THROUGH TO THE ARBITRATION STAGE AND A HEARING SCHEDULED FOR FEBRUARY 4, 1972. LATER THIS WAS CHANGED TO FEBRUARY 28, 1972. THE COMPLAINANT CONCEDES THAT THE ARBITRATION TRIBUNAL HAD BEEN SET UP.

3. IT WOULD APPEAR THAT THE EMPLOYER AND THE RESPONDENT UNION MET TOGETHER SOMETIME PRIOR TO THE NEW HEARING DATE AND WORKED OUT A PROPOSED SETTLEMENT OF THE GRIEVANCE. ON FEBRUARY 26, 1972 THE COMPLAINANT WAS CALLED TO THE UNION OFFICE BY MR. KROUSE, THE BUSINESS AGENT, AT WHICH HIS GRIEVANCES WERE DISCUSSED. THE PRESIDENT OF THE RESPONDENT, MR. BELL, WAS ALSO PRESENT. THE RESPONDENT ALLEGES THAT HE WAS ADVISED THE UNION WAS NOT GOING TO TAKE THIS CASE TO ARBITRATION, BUT THAT THE COMPANY WAS MAKING AN OFFER OF SETTLEMENT. THE OFFER CONSISTED OF RETIREMENT AT THE REQUEST OF THE COMPANY, WHICH MEANT THERE WOULD BE NO REDUCTION IN HIS PENSION. THE COMPLAINANT WAS TO RECEIVE \$700.00 IN ADDITION. ACCORDING TO THE COMPLAINANT THIS OFFER WAS DISCUSSED FOR ABOUT AN HOUR AND THE UNION ADVISED HIM THAT IF HE DID NOT ACCEPT IT, HE WOULD "WIND UP" WITH NOTHING. THE COMPLAINANT'S POSITION WAS THAT THE CASH SETTLEMENT WAS NOT ENOUGH, BECAUSE HE HAD LOST A LOT OF WAGES AND WAS NOT ABLE TO COLLECT SICK BENEFITS, ONLY UNEMPLOYMENT INSURANCE. HOWEVER, HE DID IN FACT ACCEPT

THE OFFER AND SIGNED THE SETTLEMENT, ALTHOUGH HE STATES HE DID SO RELUCTANTLY. THE COMPLAINANT DID NOT IN FACT RECEIVE \$700.00 BECAUSE \$105.00 WAS DEDUCTED FOR INCOME TAX AND ANOTHER \$311.00 WHICH HE OWED HIS EMPLOYER FOR PURCHASE OF AN AIR CONDITIONER.

4. ACCORDING TO THE REPORT OF THE FIELD OFFICER, THE COMPLAINANT IS SATISFIED WITH HIS RETIREMENT AND PENSION. WHAT HE IS DISSATISFIED WITH IS THE AMOUNT OF THE CASH SETTLEMENT. HE NOW CLAIMS THAT HE SHOULD BE COMPENSATED FOR LOSS OF INCOME FROM MAY 1971 TO FEBRUARY 29, 1972, THE DATE OF HIS RETIREMENT. HOWEVER, HAVING ACCEPTED PART OF THE SETTLEMENT, THAT IS, EARLY RETIREMENT AT FULL PENSION, AND BEING FULLY AWARE OF THE AMOUNT OF THE CASH SETTLEMENT AT THE TIME HE ACCEPTED THE COMPANY PROPOSAL, WE FAIL TO COMPREHEND HOW THE COMPLAINANT CAN NOW TAKE THE POSITION THAT THE RESPONDENT UNION HAS ACTED IN AN ARBITRARY MANNER OR IN BAD FAITH. IF, AS ALLEGED, THERE WAS ARBITRARY CONDUCT AND BAD FAITH, IT WOULD SURELY APPLY TO THE WHOLE OFFER AND NOT TO JUST ONE PART OF IT. EITHER THE UNION WAS ACTING IN AN ARBITRARY FASHION OR IN BAD FAITH IN SUPPORTING THE COMPANY PROPOSITION OR IT WAS NOT. IT CANNOT BE SAID THAT IT WAS ACTING IN GOOD FAITH IN RELATION TO THE RETIREMENT PROPOSAL AND IN BAD FAITH WITH RESPECT TO THE CASH SETTLEMENT. THE OFFER MUST BE VIEWED IN ITS TOTALITY. THE COMPLAINANT HAVING ACCEPTED THE OFFER, ALBEIT RELUCTANTLY, AND THE COMPLAINANT BEING NOW CONTENT WITH HIS RETIREMENT AND PENSION, HE CANNOT NOW CHARGE THE UNION WITH BAD FAITH BECAUSE HE NOW BELIEVES HE SHOULD HAVE OBTAINED A BETTER SETTLEMENT.

5. HAVING REGARD TO THESE CONSIDERATIONS, WE ARE OF THE OPINION THAT THE BOARD SHOULD NOT INQUIRE FURTHER INTO THIS COMPLAINT BY MEANS OF A FORMAL HEARING. IF THE COMPLAINANT IS OF THE OPINION THAT THE BOARD HAS ERRED IN ANY WAY, IT IS ALWAYS OPEN TO HIM TO REQUEST THE BOARD TO RECONSIDER ITS DECISION PURSUANT TO SECTION 95(1) OF THE ACT. WE NOTE IN PASSING THAT THE COMPLAINANT INFORMED THE FIELD OFFICER THAT EVEN IF THE BOARD HELD A FORMAL HEARING, HE DID NOT KNOW IF HE WOULD ATTEND SUCH A HEARING.

6. IN THE RESULT, THE COMPLAINT IS DISMISSED.

1759-71-U: I. K. TAMIMI, ESQUIRE OF THE TOWNSHIP OF BRAMPTON, IN THE COUNTY OF PEEL (COMPLAINANT) v. MASSEY FERGUSON, ESQUIRE, OF THE MUNICIPALITY OF METROPOLITAN TORONTO, IN THE COUNTY OF YORK (RESPONDENT).
(RESPONDENT).

BEFORE: G. W. REED, Q.C., CHAIRMAN, AND BOARD MEMBERS E. BOYER AND H.J.F. ADE.

DECISION OF THE BOARD:

MAY 25, 1972.

1. THIS IS A COMPLAINT UNDER SECTION 79 OF THE LABOUR RELATIONS ACT IN WHICH THE COMPLAINANT ALLEGES THAT HE HAS BEEN DEALT WITH BY THE RESPONDENT COMPANY CONTRARY TO SECTIONS 58, 60, 61, 62, 69, 71 AND 79 OF THE LABOUR RELATIONS ACT. LOCAL 439 OF THE UNITED AUTOMOBILE WORKERS IS NAMED AS A TRADE UNION THAT MAY BE AFFECTED BY THE COMPLAINT.

2. A FIELD OFFICER WAS APPOINTED TO INQUIRE INTO THE COMPLAINT AND HE HAS NOW REPORTED TO THE BOARD. THIS REPORT CONSISTS OF STATEMENTS OBTAINED FROM THE COMPLAINANT, THE RESPONDENT COMPANY AND LOCAL 439 U.A.W. FOR THE PURPOSE OF THIS DECISION WE ARE CONSIDERING ONLY THE STATEMENT OF THE COMPLAINANT, WHICH FOR PRESENT PURPOSES WE ASSUME TO BE CORRECT. WHILE THE COMPLAINT MAKES MANY ALLEGATIONS AGAINST BOTH THE COMPANY AND THE UNION, IT IS CLEAR FROM THE COMPLAINANT'S STATEMENT TO THE FIELD OFFICER THAT THE REAL COMPLAINT CONCERNS THE COMPLAINANT'S TERMINATION FROM EMPLOYMENT IN JANUARY 1972. IN ANY EVENT, APART FROM THIS LAST MENTIONED COMPLAINT, THE OTHER ALLEGATIONS SET OUT IN THE COMPLAINT ALL RELATE TO MATTERS OCCURRING BETWEEN 1968 AND JULY 1971 AND, IN OUR VIEW, THESE ARE NOT MATTERS WHICH SHOULD BE INQUIRED INTO FURTHER BY MEANS OF A FORMAL HEARING, IN VIEW OF THE DELAY IN FILING THE ALLEGATIONS.

3. THE GIST OF THE MOST RECENT COMPLAINT, AS CONTAINED IN THE STATEMENT TO THE FIELD OFFICER, IS THAT THE COMPLAINANT WAS LAID OFF IN TORONTO BY THE RESPONDENT COMPANY ON JULY 5, 1971. HE SUBSEQUENTLY OBTAINED EMPLOYMENT IN BRAMPTON AND FOR SOME TIME COMMUTED FROM HIS TORONTO RESIDENCE ON FERMANAGH AVENUE. THIS WAS THE ADDRESS WHICH APPEARED ON THE COMPANY'S PERSONNEL RECORDS. SUBSEQUENTLY THE COMPLAINANT DECIDED TO MOVE TO BRAMPTON. BY LETTER DATED JANUARY 15, 1972, MAILED REGISTERED JANUARY 18, 1972, THE COMPLAINANT NOTIFIED THE COMPANY OF HIS CHANGE OF ADDRESS. ON JANUARY 22ND HE RECEIVED A TELEGRAM FROM THE PRESIDENT OF LOCAL 439, ADVISING HIM THAT HIS SENIORITY WITH THE COMPANY WAS CANCELLED, AS HE HAD BEEN TOO LATE IN NOTIFYING THE COMPANY OF HIS CHANGE OF ADDRESS. BY LETTER DATED JANUARY 25, 1972, HE WAS ADVISED THAT HIS EMPLOYMENT WITH THE COMPANY WAS TERMINATED IN ACCORDANCE WITH ARTICLE 11.05(E) OF THE AGREEMENT BETWEEN THE COMPANY AND LOCAL 439. THAT ARTICLE PROVIDES THAT AN EMPLOYEE'S SENIORITY RIGHTS AND HIS EMPLOYMENT RELATIONSHIP SHALL TERMINATE IF HE IS LAID OFF AND FAILS TO RETURN TO WORK WITHIN EIGHT CALENDAR DAYS FROM DATE TO RECALL NOTICE, EXCEPT IN CERTAIN CIRCUMSTANCES AS SPELLED OUT IN THE SAID ARTICLE.

4. FOLLOWING RECEIPT OF THE LETTER TERMINATING HIS EMPLOYMENT, THE COMPLAINANT WENT TO SEE THE CHIEF STEWARD, A MR. JOHNSON, AND MR. RIPLEY, A COMMITTEE MAN. MR. JOHNSON TOLD HIM TO FILE A GRIEVANCE, THE COMPLAINANT STATES, "I DID NOT FILE ONE AS I HAD NOT BEEN SUCCESSFUL IN THE GRIEVANCES THAT I HAD FILED MANY TIMES BEFORE. I TOLD HIM I WAS GOING TO TRY AND GET GOVERNMENT TO GET MY JOB BACK."

5. THE ABOVE STATEMENT OF FACTS DOES NOT, IN OUR JUDGMENT, CONTAIN ANYTHING THAT EVEN REMOTELY SUGGEST THAT THE RESPONDENT EMPLOYER ACTED CONTRARY TO ANY OF THE SECTIONS RELIED ON BY THE COMPLAINANT IN HIS COMPLAINT OR, INDEED, ANY OTHER SECTION OF THE LABOUR RELATIONS ACT.

6. WHILE LOCAL 439 WAS NOT NAMED AS A PARTY TO THE COMPLAINT, IT IS CLEAR THAT THE COMPLAINANT BELIEVED HE WAS ALSO BRINGING THE COMPLAINT AGAINST THE UNION. THE GIST OF THE COMPLAINT HERE IS THAT, IN HIS WORDS, "I THINK THE UNION ACTED IN BAD FAITH IN MY CASE. THEY WOULD NOT FIGHT FOR MY RIGHTS UNDER THE UNION AGREEMENT". THE COMPLAINANT IS THUS RELYING ON SECTION 60 OF THE ACT WHICH PROVIDES:

60. A TRADE UNION OR COUNCIL OF TRADE UNIONS, AS LONG AS IT CONTINUES TO BE ENTITLED TO REPRESENT EMPLOYEES IN A BARGAINING UNIT, SHALL NOT ACT IN A MANNER THAT IS ARBITRARY, DISCRIMINATORY OR IN BAD FAITH IN THE REPRESENTATION OF ANY OF THE EMPLOYEES IN THE UNIT, WHETHER OR NOT MEMBERS OF THE TRADE UNION OR OF ANY CONSTITUENT UNION OF THE COUNCIL OF TRADE UNIONS, AS THE CASE MAY BE.

7. WE ARE AT A COMPLETE LOSS TO UNDERSTAND HOW THE COMPLAINANT CAN SUGGEST THAT THE UNION ACTED IN AN ARBITRARY OR DISCRIMINATORY MANNER OR IN BAD FAITH IN THE CIRCUMSTANCES OUTLINED ABOVE. IF THE COMPLAINANT THOUGHT HE WAS DISCHARGED WITHOUT CAUSE, HIS PROPER COURSE OF ACTION WAS TO LODGE A GRIEVANCE. THIS IS THE WHOLE PURPOSE OF THE GRIEVANCE PROCEDURE IN A COLLECTIVE AGREEMENT. HE WAS ADVISED TO FILE A GRIEVANCE BY THE UNION OFFICIALS. HAVING FAILED TO DO SO, HE CANNOT NOW COMPLAIN THAT THE UNION ACTED CONTRARY TO SECTION 60, ON THE ASSUMPTION THAT IT ALLEGEDLY SO ACTED IN THE PAST.

8. IN THE RESULT, AND HAVING REGARD TO THE ABOVE CONSIDERATIONS, WE ARE OF THE OPINION THAT THE BOARD OUGHT NOT TO INQUIRE FURTHER INTO THE COMPLAINT BY MEANS OF A FORMAL HEARING. IF THE COMPLAINANT IS OF THE OPINION THAT THE BOARD HAS ERRED IN SOME MATERIAL WAY, IT IS ALWAYS OPEN TO HIM TO REQUEST THE BOARD TO RECONSIDER ITS DECISION UNDER SECTION 95(1) OF THE ACT.

9. THE COMPLAINT IS DISMISSED.

1904-72-U: QUIGLEY CONSTRUCTION COMPANY LIMITED (APPLICANT) V. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (RESPONDENT).

BEFORE: FRANK V. BOSCARIOL, VICE-CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND O. HODGES.

APPEARANCES AT THE HEARING: W. G. PHELPS AND R. MCDIARMID FOR THE APPLICANT; RAYMOND KOSKIE AND JEFFREY SLOPEN FOR THE RESPONDENT.

DECISION OF FRANK V. BOSCARIOL AND J. D. BELL: MAY 26, 1972.

1. THIS IS AN APPLICATION PURSUANT TO THE PROVISIONS OF SECTION 82 OF THE LABOUR RELATIONS ACT WHEREIN THE APPLICANT SEEKS A DECLARATION THAT A STRIKE CALLED OR AUTHORIZED BY THE RESPONDENT IS UNLAWFUL.

2. THE EVIDENCE ESTABLISHES THAT THE APPLICANT AND RESPONDENT WERE PARTIES TO A COLLECTIVE AGREEMENT EFFECTIVE FROM FEBRUARY 20, 1970 TO APRIL 20, 1971. FOLLOWING TIMELY NOTICE TO BARGAIN, VARIOUS MEETINGS WERE HELD BETWEEN THE PARTIES. THESE NEGOTIATIONS WERE NOT SUCCESSFUL IN SETTLING ALL MATTERS IN DISPUTE. FOLLOWING THE INTERVENTION OF A CONCILIATION OFFICER, THE ISSUE OF RETROACTIVITY REMAINED UNRESOLVED AND BY LETTER DATED APRIL 7, 1972, THE PARTIES WERE ADVISED THAT THE MINISTER HAD DECIDED NOT TO APPOINT A CONCILIATION BOARD IN REFERENCE TO THE DISPUTE.

3. THE EVIDENCE OF R. MCDIARMID, PRESIDENT AND GENERAL MANAGER OF THE APPLICANT, DISCLOSES THAT ON FRIDAY, APRIL 21, 1972, HE HAD SCHEDULED WORK FOR TWO PROJECTS AT THE CENTURY BUILDING AND CADILLAC WORK SITES LOCATED IN THE HAMILTON AREA. THE WITNESS FURTHER TESTIFIED THAT AT APPROXIMATELY 8:10 THAT MORNING HE ATTENDED AT THE CENTURY JOB SITE WHERE HE WAS MET BY FIVE OR SIX OF HIS EMPLOYEES PICKETING IN FRONT OF THE ENTRANCE AND CARRYING SIGNS WHICH READ "LOCAL 793 ON LEGAL STRIKE." HE FURTHER STATED THAT ALTHOUGH WORK WAS SCHEDULED FOR THIS PROJECT NO EMPLOYEES DID ACTUALLY COMMENCE TO WORK ON THIS DATE. UPON OBSERVING JACK REDSHAW, A BUSINESS AGENT OF THE RESPONDENT IN THE LINE, HE DREW HIM ASIDE AND ASKED HIM IF HE WOULD ALLOW THE FLOAT TO ENTER THE SITE IN ORDER TO PICK UP THE FRONT LOADER, OR WHETHER IT WAS NECESSARY TO CALL THE POLICE. THE WITNESS FURTHER TESTIFIED THAT REDSHAW TOLD HIM THAT IT WOULD NOT BE NECESSARY TO PHONE THE POLICE AND UPON ASCERTAINING THE DESTINATION FOR DELIVERY OF THE MACHINE, INSTRUCTED THE EMPLOYEES TO PERMIT THE FLOAT TO ENTER THE SITE, PICK UP THE LOADER AND LEAVE. UPON CROSS-EXAMINATION, THE WITNESS STATED THAT HE ASKED REDSHAW IF HE WOULD STILL MEET HIM AT HIS OFFICE AT 9:30 A.M. THAT DAY, WHICH MEETING HAD BEEN ARRANGED THE PREVIOUS EVENING. ALTHOUGH INITIALLY DENYING THAT ANY OTHER CONVERSATION TOOK PLACE WITH REDSHAW, THE WITNESS SUBSEQUENTLY STATED THAT HIS OPENING REMARKS TO HIM AT THE PICKETED SITE WERE TO THE EFFECT THAT "YOU ARE EARLY", ALLUDING TO THE FACT THAT THE STRIKE WAS PREMATURE. THE WITNESS FURTHER STATED THAT HE DID MEET WITH THE UNION AT ABOUT 9:45 A.M. AT HIS OFFICE, IN WHICH HE DREW ATTENTION TO THE FACT THAT THE STRIKE THAT MORNING WAS ILLEGAL. AS REGARDS THE SCHEDULING OF WORK, THE WITNESS INDICATED THAT FOR ANY DAY, SCHEDULING WOULD NORMALLY BE LEFT

UNTIL 5:00 A.M. OF THE PARTICULAR DAY IN QUESTION DEPENDING ON WEATHER CONDITIONS EXISTING AT THAT TIME. THE WITNESS FURTHER INDICATED THAT AS OF THE DATE OF THE HEARING OF THIS MATTER ON MAY 2, 1972, APPLICATIONS FOR CONSENT TO PROSECUTE THE RESPONDENT, REDSHAW AND CERTAIN NAMED EMPLOYEES ARE NOW PENDING BEFORE THE BOARD.

4. THE EVIDENCE OF FRANCIS O'HAGAN, A BULLDOZER OPERATOR EMPLOYED BY THE APPLICANT, DISCLOSES THAT HE DID NOT START WORK AT THE CADILLAC JOB SITE ON FRIDAY MORNING BUT SHORTLY THEREAFTER WAS INSTRUCTED BY A UNION OFFICIAL TO STOP WORK SINCE A PICKET LINE HAD BEEN SET UP AT THE CENTURY PROJECT. THE WITNESS THEREUPON ATTENDED AT THE UNION HALL, SIGNED UP FOR STRIKE BENEFITS UPON BEING TOLD BY REDSHAW THAT THE STRIKE WAS LEGAL AND THEREUPON JOINED THE PICKET LINE AT THE CENTURY PROJECT. UPON CROSS-EXAMINATION, THE WITNESS STATED THAT HE DID INFORM TOMKINS, THE SUPERINTENDENT THAT HE WAS LEAVING HIS WORK BECAUSE OF THE PICKET LINE BUT RECEIVED NO REPLY FROM HIM. HE FURTHER TESTIFIED THAT MCDIARMID SPOKE TO HIM ABOUT 3:00 P.M. AT THE PICKETED SITE BUT ONLY IN RELATION TO THE NAME OF A FELLOW EMPLOYEE.

5. IN DEFENCE, JACK REDSHAW TESTIFIED THAT CONTRARY TO THE EVIDENCE OF MCDIARMID, HE DID INFORM HIM DURING THEIR TELEPHONE DISCUSSION ON THURSDAY EVENING, APRIL 20, 1972, THAT THERE WOULD BE A STRIKE THE NEXT MORNING AND THAT HE WAS INFORMED BY MCDIARMID AT THIS TIME THAT NO WORK WOULD BE CONSEQUENTLY SCHEDULED FOR THE TWO JOB SITES. THE WITNESS COULD NOT RECALL WHETHER MCDIARMID HAD TOLD HIM AT THE CADILLAC SITE THE NEXT MORNING THAT "HE WAS EARLY." IN THE WORDS OF THE WITNESS THE FOLLOWING CONVERSATION TOOK PLACE AT THE MEETING SUBSEQUENTLY HELD THE FOLLOWING FRIDAY MORNING: "MCDIARMID TOLD ME THAT HE BELIEVED THE STRIKE TO BE ILLEGAL. I SAID THAT I HAD WAITED THE FOURTEEN DAYS. HE SAID THERE ARE AN EXTRA TWO DAYS. I GOT OUT A COPY OF THE ACT AND THUMBED THROUGH IT. MCDIARMID PICKED UP A PIECE OF PAPER ON HIS DESK AND READ OUT THE SECTION DEALING WITH THE FOURTEEN DAYS AND SAID THAT HE WAS SURE THAT YOU HAD TO ALLOW FOR ANOTHER TWO DAYS GRACE. I TOLD HIM I WAS UNAWARE OF SUCH A SECTION AND I WOULD CONSULT MY LAWYERS. HE REMINDED ME OF THE TEN THOUSAND DOLLAR FINE FOR UNIONS AND THE ONE THOUSAND DOLLAR FINE FOR INDIVIDUALS. I SAID THAT I WOULD CONSULT WITH MY LAWYERS AND IF THIS IS TRUE I WOULD REMOVE THE PICKET LINE. HE TOLD ME THE DAMAGE HAD ALREADY BEEN DONE. I SAID I WOULD STILL CONSULT WITH MY LAWYER AND CALL HIM BACK." THE WITNESS THEN INDICATED THAT MCDIARMID IN A HALF-JOKINGLY MANNER REPLIED THAT "IF YOU GET THEM OFF BY NOON IT WILL ONLY BE FIVE THOUSAND DOLLARS." THE WITNESS CONCLUDED BY STATING THAT HE COULD NOT CONTACT HIS LAWYERS IN TORONTO UNTIL 5:30 P.M. THAT FRIDAY AS THEY WERE OUT OF THE OFFICE.

6. THE RELEVANT LEGISLATION IN THESE CIRCUMSTANCES, IS AS FOLLOWS:

SECTION 63(2) OF THE ACT PROVIDES:

"WHERE NO COLLECTIVE AGREEMENT IS IN OPERATION, NO EMPLOYEE SHALL STRIKE AND NO EMPLOYER SHALL LOCK OUT AN EMPLOYEE UNTIL THE MINISTER HAS APPOINTED A CONCILIATION OFFICER OF A MEDIATOR UNDER THIS ACT AND,

- (A) SEVEN DAYS HAVE ELAPSED AFTER THE MINISTER HAS RELEASED TO THE PARTIES THE REPORT OF A CONCILIATION BOARD OR MEDIATOR; OR
- (B) FOURTEEN DAYS HAVE ELAPSED AFTER THE MINISTER HAS RELEASED TO THE PARTIES A NOTICE THAT HE DOES NOT CONSIDER IT ADVISABLE TO APPOINT A CONCILIATION BOARD,

AS THE CASE MAY BE."

7. HOWEVER, THIS PROVISION MUST BE READ IN CONJUNCTION WITH SECTION 102(3) OF THE ACT, WHICH PROVIDES:

"A DECISION, DETERMINATION, REPORT, INTERIM ORDER, ORDER, DIRECTION, DECLARATION OR RULING OF THE BOARD, A NOTICE FROM THE MINISTER THAT HE DOES NOT CONSIDER IT ADVISABLE TO APPOINT A CONCILIATION BOARD, A NOTICE FROM THE MINISTER OF A REPORT OF A CONCILIATION BOARD OR OF A MEDIATOR, OR A DECISION OF AN ARBITRATOR OR OF AN ARBITRATION BOARD,

- (A) IF SENT BY MAIL TO THE PERSON, EMPLOYERS' ORGANIZATION, TRADE UNION OR COUNCIL OF TRADE UNIONS CONCERNED ADDRESSED TO HIM OR IT AT HIS OR ITS LAST-KNOWN ADDRESS, SHALL BE DEEMED TO HAVE BEEN RELEASED ON THE SECOND DAY AFTER THE DAY ON WHICH IT WAS SO MAILED; OR
- (B) IF DELIVERED TO A PERSON, EMPLOYERS' ORGANIZATION, TRADE UNION OR COUNCIL OF TRADE UNIONS CONCERNED AT HIS OR ITS LAST-KNOWN ADDRESS, SHALL BE DEEMED TO HAVE BEEN RELEASED ON THE DAY NEXT AFTER THE DAY ON WHICH IT WAS SO DELIVERED."

8. IN THE PAST, WE NOTE THAT THERE HAS EXISTED SOME MISUNDERSTANDING BY CERTAIN PERSONS WHO BY ERROR HAVE NEGLECTED TO INCLUDE

THE TWO EXTRA DAYS PROVIDED FOR IN SECTION 102(3)(A) AND THUS HAVE EMBARKED UPON STRIKE ACTION UPON ALLOWING THE LAPSE OF ONLY FOURTEEN DAYS AS SPECIFIED IN SECTION 63(2)(B). THUS IN SUCH CIRCUMSTANCES, THE BOARD HAS GRANTED CONSENT TO INSTITUTE PROSECUTIONS AGAINST A TRADE UNION AND ITS PRESIDENT (CLOUTIER BROS. LTD. CASE BOARD FILE NO. 766-71-U) AND ALSO AGAINST THE EMPLOYEES INVOLVED (CLOUTIER BROS. LTD. CASE BOARD FILE NO. 765-71-U). ALTHOUGH IT IS THE POLICY OF THE BOARD NOT TO GIVE REASONS FOR ITS DECISION IN GRANTING SUCH CONSENTS BECAUSE OF THE DANGER THAT SUCH REASONS WILL BE INTERPRETED AS AN EXPRESSION OF OPINION ON THE MERITS OF THE CASE ITSELF, THE DISSENT OF THE BOARD MEMBER ARCHER IN THE LATTER CASE, DISCLOSES THE RELEVANT FACTS THEREIN.

9. UPON REVIEWING THE RELEVANT LEGISLATION, IT BECOMES CLEAR THEREFORE THAT BEFORE A LAWFUL STRIKE MAY BE EFFECTED, A TOTAL OF SIXTEEN DAYS MUST ELAPSE FROM THE DATE OF MAILING OF THE LETTER TO THE PARTIES ADVISING THAT THE MINISTER HAD DECIDED NOT TO APPOINT A CONCILIATION BOARD, THAT IS TO SAY, AT THE COMMENCEMENT OF THE SEVENTEENTH DAY THEREAFTER. SPECIFICALLY, IN THE INSTANT SITUATION, THIS WOULD MEAN THAT ANY STRIKE WOULD BE LAWFUL AS OF 12:01 A.M. MONDAY, APRIL 24, 1972.

10. HAVING REGARD THEREFORE TO ALL OF THE EVIDENCE ADDUCED IN THIS REGARD, WE ARE SATISFIED, BUT WITHOUT AT THIS POINT SPECIFICALLY DECLARING, THAT THE EMPLOYEES OF THE APPLICANT COMPANY DID ENGAGE IN AN UNLAWFUL STRIKE ON FRIDAY, APRIL 21, 1972, WITHIN THE MEANING OF SECTION 1(1)(M) OF THE ACT WHICH WAS CALLED OR AUTHORIZED BY THE RESPONDENT, CONTRARY TO SECTION 82 OF THE SAID ACT. THE QUESTION NOW BEFORE US, IS WHETHER WE SHOULD, IN THE EXERCISE OF OUR DISCRETION, MAKE SUCH A DECLARATION, HAVING REGARD TO ALL OF THE CIRCUMSTANCES OF THE INSTANT CASE.

11. AS REGARDS THE POLICY OF THE BOARD PRIOR TO THE INCEPTION OF THE FORMER SECTION 59(2) (FIRST APPEARING IN THE REVISED STATUTES OF ONTARIO, 1960 CHAPTER 202, AS AMENDED BY S. O. 1961-62, CHAPTER 68), COUNSEL FOR THE RESPONDENT, CITED THE ARVO TUOMI CASE VOL. 1 (1944-1959) 53 C.L.L.C. P. 1445, WHEREIN AT PAGE 1447, IT IS STATED:

"WITHOUT ATTEMPTING TO LAY DOWN AN EXHAUSTIVE PRINCIPLE GOVERNING THE EXERCISE OF SUCH DISCRETION, IT SEEMS TO US THAT THE ISSUANCE OF A DECLARATION IS AN EXTRAORDINARY REMEDY AND THAT THE DECLARATION SHOULD BE MADE ONLY WHERE THERE IS NO EQUALLY CONVENIENT, BENEFICIAL AND EFFECTUAL REMEDY AVAILABLE TO THE APPLICANT. HERE NO SUCH REMEDY IS AVAILABLE. THE APPLICANT'S ONLY RECOURSE WOULD BE TO APPLY FOR LEAVE TO

PROSECUTE, A COURSE WHICH HE HAS STUDIOUSLY AVOIDED AND ONE WHICH IS TO BE RESORTED TO ONLY WITH THE GREATEST CAUTION. IN THESE CIRCUMSTANCES, A DECLARATION UNDER SECTION 59 (NOW SECTION 82) IS IN ORDER."

12. THIS PROVISION, NAMELY SECTION 59(2), WHICH IS NOW SECTION 70(3) AS A RESULT OF THE 1970 REVISION TO THE ACT EFFECTIVE SEPTEMBER 1, 1971, PROVIDES THAT:

"WHERE NOTICE HAS BEEN GIVEN UNDER SECTION 45 AND NO COLLECTIVE AGREEMENT IS IN OPERATION, ANY DIFFERENCE BETWEEN THE PARTIES AS TO WHETHER OR NOT SUBSECTION 1 OF THIS SECTION WAS COMPLIED WITH MAY BE REFERRED TO ARBITRATION BY EITHER OF THE PARTIES AS IF THE COLLECTIVE AGREEMENT WAS STILL IN OPERATION AND SECTION 37 APPLIES MUTATIS MUTANDIS THERETO."

IT IS THEREFORE ARGUED THAT AN ALTERNATIVE REMEDY OF STATUTORY ARBITRATION IS NOW OPEN TO THE APPLICANT IN THE SITUATION WHERE IT HAS SUFFERED DAMAGES AS A RESULT OF THE UNION CALLING OR AUTHORIZING AN UNLAWFUL STRIKE. IN OTHER WORDS, IT IS ARGUED THAT SINCE THE EFFECT OF SUCH A PROVISION IS TO CARRY FORWARD, FOR ALL INTENTS AND PURPOSES, ALL TERMS AND CONDITIONS OF THE EXPIRED COLLECTIVE AGREEMENT, ONE OF WHICH IS THE "NO STRIKE" CLAUSE, UNTIL THE EXPIRATION OF THE FOURTEEN DAY PERIOD FOLLOWING THE RELEASE OF THE "NO BOARD" REPORT, THE APPLICANT NOW HAS AN "EQUALLY CONVENIENT BENEFICIAL AND EFFECTUAL REMEDY", BY MERELY FILING A GRIEVANCE ALLEGING A VIOLATION OF THE SAID AGREEMENT. IN THIS REGARD, THE BOARD WAS REMINDED THAT THE APPLICANT HAS ALSO FILED APPLICATIONS FOR CONSENT PROSECUTE THE RESPONDENT TOGETHER WITH VARIOUS OTHER INDIVIDUALS CONCERNED.

13. HOWEVER, IN OUR OPINION, THIS ARGUMENT BECOMES UNACCEPTABLE IN LIGHT OF THE MORE RECENT DECISION OF THE BOARD IN THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO CASE, OLRB M. R. JANUARY 1967, P. 803. AT PAGE 811, THE BOARD STATES:

"THE RESPONDENTS ALSO RELIED UPON THE ARVO TUOMI CASE 53 C.L.L.C. 1445 ¶17,052, WHICH WAS A DECISION OF THE BOARD IN MAY 1953 WHICH INDICATED THAT "THE ISSUANCE OF A DECLARATION IS AN EXTRA-ORDINARY REMEDY AND THAT THE DECLARATION SHOULD BE MADE ONLY WHERE THERE IS NO EQUALLY CONVENIENT, BENEFICIAL AND EFFECTUAL REMEDY AVAILABLE TO THE APPLICANT".

THE RESPONDENTS ARGUED THAT BECAUSE THE APPLICANT IN THE INSTANT CASE IS ALSO SEEKING, IN OTHER APPLICATIONS, CONSENT TO PROSECUTE THE PRESENT RESPONDENTS AND IS RELYING ON THE SAME FACTS IN SUPPORT OF ITS APPLICATION FOR CONSENT TO PROSECUTE, ACCORDINGLY, PURSUANT TO THE PRINCIPLE SET FORTH IN THE ARVO TUOMI CASE THE BOARD SHOULD REFUSE TO MAKE THE DECLARATION REQUESTED IN THIS CASE BECAUSE THE APPLICANT HAS SOUGHT AN EFFECTUAL REMEDY IN ANOTHER APPLICATION.

THE BOARD POINTED OUT TO THE RESPONDENTS AT THE HEARING THAT WHILE THE PRINCIPLE ENUNCIATED BY THE BOARD IN THE ARVO TUOMI CASE WAS THE PRINCIPLE WHICH GUIDED THE BOARD'S DISCRETION IN ISSUING STRIKE DECLARATIONS IN 1953, THIS HAS NOT BEEN THE PRACTICE OF THE BOARD SINCE THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE WERE AMENDED IN 1954 TO PROVIDE FOR THE EXPEDITIOUS HANDLING OF STRIKE DECLARATION APPLICATIONS. GENERALLY SPEAKING, THE ONLY TIME THE BOARD WOULD REFUSE TO MAKE A DECLARATION AT THE PRESENT TIME IS WHERE THE EMPLOYEES HAVE RETURNED TO WORK PRIOR TO THE HEARING OF THE APPLICATION UNLESS THERE HAS BEEN A PATTERN OF SIMILAR CONDUCT IN THE PAST, OR WHERE THE EMPLOYEES WHO ENGAGED IN THE UNLAWFUL STRIKE WERE DISCHARGED AND HAVE CEASED TO BE EMPLOYEES OF THE APPLICANT. THE REASON FOR THE PROCEDURE ADOPTED IN 1954 WAS THAT IT WAS HOPED THAT BY BRINGING THE PARTIES TO THE DISPUTE BEFORE THE BOARD IN AN EXPEDITIOUS MANNER, THE BOARD COULD RULE ON THE STRIKE OR LOCKOUT AND IF A DECLARATION WAS MADE, THE PARTIES COULD REASSESS THEIR POSITION HAVING BEEN INFORMED OF THE UNLAWFULNESS OF THE ACTION TAKEN. AS WAS HOPED, IT HAS BEEN THE BOARD'S EXPERIENCE THAT ONCE A DECLARATION HAS BEEN MADE THERE IS USUALLY AN IMMEDIATE RETURN TO WORK."

THE FACT THAT THE APPLICANT MAY HAVE AN ADDITIONAL REMEDY OPEN TO IT UNDER SECTION 70(3) AND WHICH HAS NOT BEEN PURSUED AS OF THE DATE OF THIS HEARING, DOES NOT ALTER OUR OPINION IN THIS REGARD.

14. THE BOARD HAS ALSO BEEN DIRECTED TO THE NATIONAL REFRACTORIES LTD. CASE VOL. 2 (1960-1964) 63 C.L.L.C. P. 1149 AT PAGE 1150, WHEREIN IT IS STATED:

"SECTION 67 (NOW SECTION 82) VESTS IN THE BOARD A DISCRETION AS TO WHETHER A DECLARATION SHOULD

OR SHOULD NOT BE ISSUED. THAT IS TO SAY, THE LEGISLATURE RECOGNIZED THAT THERE MIGHT BE CASES IN WHICH, ALTHOUGH AN UNLAWFUL STRIKE OCCURS, THE BOARD MAY REFRAIN FROM MAKING A DECLARATION TO THAT EFFECT. THE PRINCIPLES GOVERNING THE CIRCUMSTANCES UNDER WHICH THE BOARD WILL OR WILL NOT EXERCISE ITS DISCRETION HAVE BEEN SET OUT IN NUMEROUS DECISIONS OF THE BOARD.

IN THE JOYCE AND SMITH PLATING COMPANY LIMITED CASE (1956) CCH CANADIAN LABOUR LAW REPORTER, TRANSFER BINDER '55-'59 ¶16,048, C.L.S. 76-526, THE BOARD NOTED THAT ITS POLICY, FOR SOME YEARS, SUBJECT TO CERTAIN EXCEPTIONS, HAD BEEN NOT TO ISSUE A DECLARATION IN A CASE WHERE THE EMPLOYEES WHO ENGAGED IN THE STRIKE HAD RETURNED TO WORK BEFORE THE DATE WHEN THE APPLICATION WAS HEARD. TO MAKE THE POLICY EFFECTIVE, THE BOARD ABRIDGES THE TIME FOR FILING A REPLY AND ALSO THE TIME THAT NORMALLY ELAPSES BEFORE A CASE IS HEARD. THE BOARD WENT ON TO SAY THAT THE REASON WHICH IMPELLED IT TO ARRIVE AT THIS POLICY WAS AN ENDEAVOUR TO EMPLOY THE RELEVANT PROVISIONS OF THE ACT TO BRING ABOUT A RETURN TO WORK."

IN THIS REGARD, COUNSEL FOR THE RESPONDENT ARGUES THAT SINCE THE PRIME PURPOSE OF THE DECLARATION PROCEEDINGS IS TO BRING ABOUT A RETURN TO WORK, AND THAT THE BOARD NORMALLY REFUSES TO MAKE THE DECLARATION IN THE SITUATION WHERE THE EMPLOYEES HAVE ALREADY RETURNED TO WORK AS OF THE DATE OF THE HEARING, THE SAME RESULT SHOULD FOLLOW IN THE CIRCUMSTANCES OF THE INSTANT CASE, WHERE AS OF THE DATE OF THE HEARING, THE UNION AND THE EMPLOYEES ARE IN A POSITION TO LAWFULLY STRIKE. THIS SITUATION, IT IS SUBMITTED, WOULD THUS REPLACE THE SITUATION "WHERE THE EMPLOYEES WHO ENGAGED IN THE STRIKE HAD RETURNED TO WORK BEFORE THE DATE WHEN THE APPLICATION WAS MADE" AND THEREFORE NOT A PROPER CASE FOR THE BOARD TO ISSUE A DECLARATION.

15. COUNSEL FOR THE RESPONDENT, FURTHER DIRECTED THE BOARD TO A FURTHER PASSAGE IN THE NATIONAL REFRACTORIES LTD. CASE (SUPRA) AT PAGE 1150, WHERE IT IS STATED:

"IN THE BALL BROTHERS LTD. CASE (1957) CCH CANADIAN LABOUR LAW REPORTER, TRANSFER BINDER, '55-'59, ¶16,091, C.L.S. 76-576, IT WAS STATED THAT THE BOARD GENERALLY HELD THAT A DECLARATION SHOULD NOT BE ISSUED IN CASES IN WHICH A STRIKE HAS BEEN SETTLED BEFORE THE

APPLICATION HAS COME ON FOR HEARING. THE DECISION WENT ON TO SPELL OUT SPECIAL CIRCUMSTANCES IN WHICH A DECLARATION UNDER SECTION 67 WOULD BE ISSUED EVEN THOUGH THE APPLICATION CAME ON FOR HEARING AFTER THE STRIKE HAD BEEN SETTLED. SUCH CIRCUMSTANCES ARE (I) WHERE A UNION HAS CALLED A NUMBER OF UNLAWFUL STRIKES AS PART OF A GENERAL PATTERN FOR GAINING ITS OBJECTIVES IN DEFIANCE OF THE LAW, AND (II) WHERE, ALTHOUGH THE PARTICULAR UNLAWFUL STRIKE WHICH PROVIDED THE OCCASION FOR THAT APPLICATION HAS BEEN SETTLED, THE EMPLOYER AFFECTED THEREBY HAS A REASONABLE FEAR THAT HIS OPERATION WILL AGAIN BE INTERRUPTED IN A SIMILAR FASHION. (SEE ALSO WESTERN TIRE AND AUTO SUPPLY LIMITED CASE (1959) CCH CANADIAN LABOUR LAW REPORTER, TRANSFER BINDER '55-'59, ¶16-134, C.L.S. 76-638).

STATED ANOTHER WAY, THE BOARD HAS VIEWED STRIKE OR LOCK-OUT DECLARATIONS PRIMARILY AS INSTRUMENTS TO AID IN THE SETTLEMENT OF LABOUR DISPUTES. ACCORDINGLY IT HAS EXERCISED ITS DISCRETION IN MAKING DECLARATIONS FOR THE PURPOSE OF ENCOURAGING THE PARTIES TO RESOLVE THE ISSUES IN DISPUTE. THE BOARD HAS RECOGNIZED THAT A DECLARATION ALSO SERVES THE AUXILIARY PURPOSE OF INFORMING EMPLOYERS, TRADE UNIONS, EMPLOYEES AND THE PUBLIC AT LARGE THAT STRIKE ACTION IN A PARTICULAR INSTANCE IS UNLAWFUL. IN ADDITION A DECLARATION ACTS AS A GUIDE TO THE PARTIES CONCERNED WITH RESPECT TO THEIR FUTURE CONDUCT."

IT IS CONTENDED BY COUNSEL FOR THE RESPONDENT THAT THE WORDS "IN CASES IN WHICH A STRIKE HAS BEEN SETTLED" APPEARING IN THE FIFTH AND SIXTH LINES ABOVE, MIGHT PROPERLY BE SUBSTITUTED BY THE WORDS "IN CASES WHICH A LAWFUL STRIKE REPLACES AN UNLAWFUL STRIKE" AND THEREFORE, AS PREVIOUSLY SUGGESTED, NOT A PROPER CASE FOR THE ISSUANCE OF A DECLARATION. KEEPING IN MIND THE PRIMARY PURPOSE OF DECLARATIONS AS "INSTRUMENTS TO AID IN THE SETTLEMENT OF LABOUR DISPUTES", THE BOARD IS ASKED TO REFUSE ISSUANCE IN THE CIRCUMSTANCES OF THE INSTANT CASE SINCE NO USEFUL PURPOSE CAN NOW BE SERVED. ACCORDINGLY, IT IS ARGUED THAT THE SITUATION IN THE BALL BROTHERS LTD. CASE (SUPRA) PROVIDING FOR THE "SPECIAL CIRCUMSTANCES" IN WHICH A DECLARATION WOULD NEVERTHELESS BE ISSUED "IN CASES IN

WHICH A STRIKE HAS BEEN SETTLED BEFORE THE APPLICATION HAS COME ON FOR HEARING", WOULD NOT OCCUR IN THE PRESENT CASE SINCE THERE IS NO EVIDENCE OF PRIOR UNLAWFUL STRIKES ENGAGED IN BY THE RESPONDENT TOGETHER WITH AN ABSENCE OF EVIDENCE FROM THE APPLICANT OF A REASONABLE FEAR OF FURTHER SIMILAR INTERRUPTION.

16. HAVING CAREFULLY REVIEWED THE PREVIOUS DECISIONS OF THE BOARD IN THIS REGARD, WE ARE UNABLE TO DISCERN ANY AUTHORITY EXTENDING THE CIRCUMSTANCES FOR DENYING ISSUANCE OF THE DECLARATION ON THE GROUNDS AS SUGGESTED TO US BY COUNSEL FOR THE RESPONDENT. ON THE OTHER HAND, THE BOARD HAS IN THE PAST ISSUED DECLARATIONS IN THE SITUATION WHERE THE EMPLOYEES ENGAGED IN A PREMATURE STRIKE FOLLOWING THE RELEASE TO THE PARTIES OF NOTICE THAT THE MINISTER DOES NOT DEEM IT ADVISABLE TO APPOINT A CONCILIATION BOARD. (SEE, FOR EXAMPLE, THE WESTEEL-ROSCO LIMITED CASE OLRB M. R. JULY 1967, P. 365, DOMINION, GLASS COMPANY LIMITED CASE, BOARD FILE NO. 601-71-U). WE ACCORDINGLY DO NOT ACCEPT THE ARGUMENT ADVANCED BY COUNSEL FOR THE RESPONDENT IN THIS REGARD.

17. IN FURTHERING HIS POSITION THAT THIS IS NOT THE SORT OF CASE IN WHICH A DECLARATION SHOULD ISSUE, COUNSEL FOR THE RESPONDENT ALLEGED THAT THE APPLICANT, IN EFFECT, ACQUIESCED IN THE ACTIONS OF THE RESPONDENT BY FAILING TO ACTIVELY DISCOURAGE THE STRIKE ON THE MORNING OF APRIL 21, 1972, WHEN McDIARMID KNEW THE PREVIOUS EVENING OF THE INTENTIONS OF REDSHAW IN THIS REGARD. HAVING CAREFULLY REVIEWED THE EVIDENCE BY BOTH WITNESSES, WHICH IS IN DIRECT CONFLICT AS TO WHAT WAS ACTUALLY SAID DURING THE TELEPHONE CONVERSATION ON THE PREVIOUS THURSDAY EVENING, EVEN IF WE WERE TO PREFER THE EVIDENCE OF REDSHAW TO THAT OF McDIARMID, AND WE MAKE NO FINDING IN THIS REGARD, WE ARE NEVERTHELESS SATISFIED THAT THE CONDUCT OF McDIARMID IN NOT DIRECTLY AND FORCEFULLY DISCOURAGING THE EMPLOYEES FROM STRIKING THAT FOLLOWING DAY SHOULD NOT BE A FACTOR IN NOW "ESTOPPING" THE APPLICANT FROM SEEKING THE REMEDY AVAILABLE TO IT IN THESE PROCEEDINGS. IN OUR OPINION, THIS IS NOT A CASE WHERE THE EMPLOYER HIMSELF FELT THAT THE PICKETING WAS THE RESULT OF A LAWFUL STRIKE AS IN THE ELLIS DON LIMITED CASE, OLRB M. R. MAY 1968, P. 202. (IN ANY EVENT, WE QUESTION THE PROPRIETY OF THIS FACTOR IN LIGHT OF THE MORE RECENT DECISION OF THE BOARD IN THE DURCARD MECHANICAL CONTRACTORS LTD. CASE OLRB M. R. FEBRUARY 1971, P. 86). LIKEWISE, WE ATTACH LITTLE SIGNIFICANCE IN DISPOSING OF THIS APPLICATION, TO THE FACT THAT THE PARTIES WERE ONE ISSUE APART IN CONCLUDING A COLLECTIVE AGREEMENT PRIOR TO THE TIME OF THE MATTERS GIVING RISE TO THE DISPUTE HEREIN.

18. COUNSEL FOR THE RESPONDENT REQUESTS THAT IN THE EVENT THAT THE BOARD IS NEVERTHELESS STILL DISPOSED TO ISSUE A DECLARATION IN THESE CIRCUMSTANCES, THEN IT SHOULD BE LIMITED TO THE ONE DAY. HAVING REGARD TO THE EVIDENCE OF McDIARMID TO THE EFFECT THAT THE SCHEDULING

WOULD BE DEPENDENT ON WEATHER CONDITIONS AS DETERMINED AT 5:00 A.M. OF THE DAY IN QUESTION AND TO THE UNDISPUTED EVIDENCE OF REDSHAW THAT IT WAS "POURING RAIN FOR THE WHOLE DAY," VIZ. ON SATURDAY, APRIL 22, 1972, WE ARE PREPARED TO ACCEDE TO HIS REQUEST IN THIS REGARD.

19. IN VIEW OF ALL OF THE FOREGOING, THE BOARD DOES NOT CONSIDER THE PRESENT SITUATION TO BE ONE IN WHICH IT SHOULD DECLINE TO ISSUE A DECLARATION. HAVING REGARD TO THIS FINDING, IT WILL NOT BE NECESSARY TO DEAL WITH THE ARGUMENT RAISED BY COUNSEL FOR THE APPLICANT TO THE EFFECT THAT THE POLICY OF THE BOARD REGARDING THE ISSUANCE OF STRIKE DECLARATIONS IS NO LONGER REFLECTED IN THE CASES CITED BY COUNSEL FOR THE RESPONDENT BY VIRTUE OF THE RECENT AMENDMENT TO THE ACT EFFECTIVE FEBRUARY 15, 1972, WHICH BY THE ADDITION OF SECTION 84 (FORMERLY SECTION 68A), IT IS SUBMITTED, PROVIDES FURTHER CONSEQUENCES FLOWING FROM THE DECLARATION WHICH SHOULD NOW BE CONSIDERED BY THE BOARD IN THE ISSUANCE THEREOF.

20. PURSUANT TO THE PROVISIONS OF SECTION 82 OF THE ACT, THE BOARD THEREFORE DECLARES THAT THE RESPONDENT, INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793, DID ON APRIL 21, 1972, CALL OR AUTHORIZE AN UNLAWFUL STRIKE AGAINST THE APPLICANT.

DECISION OF BOARD MEMBER O. HODGES: MAY 26, 1972.

1. I DISSENT.

2. CONSIDERING ALL OF THE EVIDENCE RELATING TO THE TIME AT WHICH THIS STRIKE WAS CALLED, I AM SATISFIED AS TO THE GOOD FAITH OF THE TRADE UNION. THE UNION TOOK STRIKE ACTION AT A TIME SINCERELY BELIEVED TO BE IN COMPLIANCE WITH THE REQUIREMENTS OF THE ACT. THERE IS NO EVIDENCE OF ANY REASON TO BELIEVE OTHERWISE.

3. IT IS APPARANT FROM PARAGRAPH 6 AND 7 OF THE DECISION OF THE MAJORITY, THAT THE RELATIONSHIP OF THE RELEVANT SECTIONS OF THE ACT, S.63(2) APPEARING ON PAGE 33 OF THE PRINTED BOOKLET, AND S102 (3)(B) WHICH APPEARS ON PAGES 52 AND 53 OF THE PRINTED BOOKLET, REQUIRE SOME PRINTED DIRECTION EACH TO THE OTHER. CLEARLY, AN INNOCENT MISTAKE IN READING THE ACT, AT BEST NOT A SIMPLE PIECE OF LEGISLATION TO FOLLOW, MAY REASONABLY BE ASSUMED TO HAVE CAUSED THE PREMATURE BEGINNING OF WHAT BECAME A LEGAL STRIKE IN THIS MATTER.

4. IN THE CIRCUMSTANCES OF THIS CASE I WOULD NOT HAVE ISSUED THE DECLARATION. MY FINDING THEREFORE IS THAT THE APPLICATION BE DISMISSED.

1676-71-U: MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES, LOCAL 647 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (COMPLAINANT) V. HOME BREAD BAKERY, A DIVISION OF CANADIAN FOOD PRODUCTS SALES LIMITED (RESPONDENT).

BEFORE: J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBERS P. J. O'KEEFFE AND J.E.C. ROBINSON, Q.C.

APPEARANCES AT THE HEARING: E. ROVET AND G. HARRISON FOR THE COMPLAINANT; STANLEY H. NEWMAN AND STANLEY ARBUS FOR THE RESPONDENT.

DECISION OF J. D. O'SHEA, Q.C., VICE-CHAIRMAN, AND BOARD MEMBER P. J. O'KEEFFE: MAY 30, 1972.

1. THE NAME "HOME BREAD BAKERY, A DIV. OF BAGEL KING LIMITED" APPEARING IN THE STYLE OF CAUSE OF THIS COMPLAINT AS THE NAME OF THE RESPONDENT IS AMENDED TO READ: "HOME BREAD BAKERY, A DIVISION OF CANADIAN FOOD PRODUCTS SALES LIMITED".

2. THIS IS A COMPLAINT FOR RELIEF UNDER SECTION 79 OF THE LABOUR RELATIONS ACT WHEREIN THE COMPLAINANT HAS COMPLAINED THAT GARNETT DENNIS WAS DISCHARGED BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF SECTIONS 58 AND 61 OF THE LABOUR RELATIONS ACT.

3. THE EVIDENCE ESTABLISHED THAT MR. DENNIS WAS NOT THE MOST PROFICIENT WORKER AND INDEED THE COMPLAINTS ABOUT HIS SLOWNESS APPEARED TO BE SUBSTANTIATED BY THE FACT THAT THE RESPONDENT ATTEMPTED TO COMPENSATE FOR HIS SLOWNESS BY CHANGING HIM FROM AN HOURLY RATED EMPLOYEE TO A SALARIED EMPLOYEE. HOWEVER THAT MIGHT BE, THE ISSUE BEFORE THE BOARD IS WHETHER THE PERFORMANCE OF MR. DENNIS CAUSED THE COMPANY TO DISCHARGE HIM OR WHETHER HIS DISCHARGE WAS BECAUSE OF HIS UNION ACTIVITIES.

4. ON THE ONE HAND, WE HAVE THE EVIDENCE OF ONE OF THE RESPONDENT'S EMPLOYEES, MR. ROSEN, WHO TESTIFIED THAT MR. DINABERG, THE GENERAL MANAGER OF THE RESPONDENT, MADE INQUIRIES OF HIM ON THE DAY OF MR. DENNIS' DISCHARGE CONCERNING A UNION MEETING THAT HAD BEEN CALLED FOR THAT EVENING. MR. DENNIS WAS THE EMPLOYEE WHO HAD BEEN ENTRUSTED BY THE COMPLAINANT UNION TO ARRANGE FOR THE ATTENDANCE OF OTHER EMPLOYEES AT THE MEETING. WE ALSO HAVE THE EVIDENCE OF MR. WATSON, A FORMER EMPLOYEE OF THE RESPONDENT WHO HAD TO TERMINATE HIS EMPLOYMENT FOR HEALTH REASONS. MR. WATSON TESTIFIED THAT MR. DILLICH, THE RESPONDENT'S SUPERVISOR, HAD ADVISED HIM THAT THE REAL REASON FOR DISCHARGING MR. DENNIS WAS BECAUSE HE WAS ORGANIZING ON BEHALF OF THE TEAMSTERS' UNION. MR. DILLICH FURTHER STATED THAT THE RESPONDENT DID NOT CARE WHAT UNION REPRESENTED THE EMPLOYEES SO LONG AS IT WAS NOT THE TEAMSTERS' UNION.

5. ON THE OTHER HAND, MR. DILLICH TESTIFIED THAT THE DECISION TO DISCHARGE MR. DENNIS WAS MADE BY HIM ALONE AND THAT UNION ACTIVITY DID NOT PLAY A PART IN HIS DECISION. MR. DILLICH DENIED MAKING THE STATEMENT ATTRIBUTED TO HIM BY MR. WATSON.

6. HOWEVER, THERE IS OTHER EVIDENCE WHICH CONTRADICTS MR. DILLICH AND THAT EVIDENCE IS IN THE FORM OF A STATEMENT BY THE GENERAL MANAGER OF THE RESPONDENT WHICH IS ATTACHED TO THE RESPONDENT'S REPLY. THIS STATEMENT READS IN PART AS FOLLOWS:

WE WERE SET TO DISMISS HIM ON AT LEAST THREE OCCASIONS. WE HAD HIRED REPLACEMENTS AND HAD EVEN TRAINED THEM WHEN EMERGENCIES AROSE WITH OTHER EMPLOYEES AND WE SWITCHED THESE PEOPLE TO OTHER JOBS. FINALLY ON FEBRUARY 11TH, AFTER I RECEIVED COMPLAINTS AGAIN FROM TWO OF OUR MAJOR ACCOUNTS, I DECIDED THAT I HAD GONE FAR ENOUGH WITH THIS EMPLOYEE AND INSTRUCTED OUR SUPERVISOR TO CONTACT GARNETT DENNIS AND TELL HIM NOT TO REPORT FOR WORK THAT EVENING AND THAT HIS SERVICES WERE NO LONGER REQUIRED.

7. HAVING HAD AN OPPORTUNITY TO ASSESS THE CREDIBILITY OF THE WITNESSES ON THE BASIS OF THEIR DEMEANOUR IN THE WITNESS BOX AND THE MANNER IN WHICH THEY TESTIFIED IN LIGHT OF THE CONTRADICTIONS REFERRED TO ABOVE, WE FIND THAT WE ARE UNABLE TO ACCEPT THE TESTIMONY OF MR. DILLICH CONCERNING THE REASONS FOR THE DISCHARGE OF MR. DENNIS. ALTHOUGH A COMPANY IS NOT REQUIRED TO MAINTAIN ON ITS STAFF AN INCOMPETENT EMPLOYEE SIMPLY BECAUSE A UNION HAS APPLIED TO BE CERTIFIED TO REPRESENT ITS EMPLOYEES, THE REAL REASON FOR DISCHARGING SUCH AN EMPLOYEE MUST BE BECAUSE OF HIS UNSATISFACTORY PERFORMANCE. WHILE THE EVIDENCE IN THE INSTANT CASE WOULD SEEM TO INDICATE THAT MR. DENNIS' PERFORMANCE LEFT MUCH TO BE DESIRED, THE RESPONDENT HAD TOLERATED HIS PERFORMANCE FOR SOME CONSIDERABLE TIME AND HAD MADE CERTAIN ADJUSTMENTS TO COMPENSATE FOR HIM. WHILE IT MAY BE THAT MR. DENNIS WOULD HAVE BEEN EVENTUALLY DISMISSED IF HE FAILED TO IMPROVE, WE ARE OF THE VIEW THAT THE EVIDENCE IN THIS CASE CLEARLY ESTABLISHED THAT HIS UNION ACTIVITY PRECIPITATED HIS DISMISSAL. WE ACCEPT THE EVIDENCE OF MR. WATSON IN THIS REGARD AND WE VIEW MR. DILLICH'S TESTIMONY IN LIGHT OF THE STATEMENT OF THE GENERAL MANAGER WHICH IS ATTACHED TO THE RESPONDENT'S REPLY WHICH STATEMENT FOLLOWED THE INQUIRIES MADE BY THE GENERAL MANAGER CONCERNING THE UNION MEETING.

8. IN WEIGHING ALL THE EVIDENCE IN THIS CASE, WE THEREFORE FIND THAT GARNETT DENNIS WAS DISCHARGED BY THE RESPONDENT ON FEBRUARY 18, 1972 CONTRARY TO THE PROVISIONS OF SECTION 58(A) OF THE LABOUR RELATIONS ACT. WE THEREFORE DIRECT THAT THE RESPONDENT

REINSTATE MR. DENNIS IN THE POSITION HELD BY HIM AT THE TIME OF HIS DISCHARGE. WE FURTHER DIRECT THAT THE RESPONDENT PAY TO MR. DENNIS THE AMOUNT OF \$1,080 AS COMPENSATION FOR THE LOSS OF EARNINGS SUSTAINED BY MR. DENNIS AS A RESULT OF HIS DISCHARGE CONTRARY TO THE ACT.

DECISION OF BOARD MEMBER J.E.C. ROBINSON, Q.C.: MAY 30, 1972.

I HAVE READ THE DECISION OF MY COLLEAGUES BUT REGRET I AM UNABLE TO AGREE WITH THEIR FINDINGS.

THE ADJUDICATION OF THE EVIDENCE IN THIS CASE RESOLVES ITSELF MAINLY INTO A QUESTION OF CREDIBILITY AND THE MAIN EVIDENCE WHICH WE MUST ASSESS IS THAT GIVEN BY THE GRIEVOR, GARNETT DENNIS, AGAINST THAT GIVEN BY THE COMPANY SUPERVISOR, ED. DILLICH.

DENNIS PRESENTED HIMSELF BEFORE THE BOARD AND TESTIFIED, INTER ALIA, THAT HE WAS A DILIGENT, CONSCIENTIOUS, HARD-WORKING EMPLOYEE WHO FOLLOWED COMPANY INSTRUCTIONS AND WAS PROFICIENT AT HIS JOB.

ON THE OTHER HAND, DILLICH, AS WELL AS ALL OTHER WITNESSES CALLED BOTH BY THE RESPONDENT AND THE COMPLAINANT, TESTIFIED THAT DENNIS WAS AN UNSATISFACTORY EMPLOYEE WHO HAD BEEN ON THE BRINK OF DISCHARGE FOR SEVERAL MONTHS BUT WHO, BECAUSE OF A LACK OF SOMEONE TO REPLACE HIM AND BECAUSE OF GENEROSITY AND SYMPATHY ON THE PART OF THE COMPANY, HAD RETAINED EMPLOYMENT IN VARIOUS POSITIONS WITH THE COMPANY UNTIL THE CULMINATING INCIDENTS OF BAD WORK CONDUCT DEMANDED HIS DISCHARGE.

IN MY RESPECTFUL OPINION, THIS CASE IS A CLASSIC EXAMPLE OF A CARELESS AND DELATORY EMPLOYEE, WHO, WHILE ON THE THRESHOLD OF BEING DISMISSED, SEEKS OUT THE SERVICES OF A TRADE UNION IN THE HOPE THAT IT WILL PROTECT HIM FROM SUCH FATE.

I ACCEPT THE EVIDENCE OF DILLICH THAT DENNIS WAS NOT DISMISSED CONTRARY TO THE LABOUR RELATIONS ACT AND ACCORDINGLY WOULD DISMISS THE APPLICATION.

IN CLOSING, I MUST MAKE REFERENCE TO THE FINDING BY THE MAJORITY THAT THE STATEMENT IN THE RESPONDENT'S REPLY IS "EVIDENCE" UPON WHICH THIS BOARD MAY MAKE A FINDING. I MUST RECORD THAT THE REPLY IS NOT EVEN SIGNED BY THE COMPANY BUT RATHER, IT IS SIGNED BY COUNSEL FOR THE COMPANY.

IN ANY EVENT, IT HAD ALWAYS BEEN MY UNDERSTANDING THAT ALLEGATIONS MADE BOTH IN THE APPLICATION AND REPLY WERE NOT TO BE CONSIDERED AS EVIDENCE BUT WERE TO BE CONSIDERED SOMEWHAT IN THE

SAME LIGHT AS PLEADINGS IN CIVIL LITIGATION. FROM MY READING OF THE MAJORITY DECISION, THIS WOULD APPEAR NOT TO BE THE CASE, AND ACCORDINGLY, COUNSEL APPEARING ON BEHALF OF RESPONDENTS, WHO DO NOT WISH TO HAVE THEIR ALLEGATIONS USED AGAINST THEM AT THE HEARING, WOULD BE WELL ADVISED TO CONFINE THEIR REPLY TO A STRAIGHT DENIAL OF ALL ALLEGATIONS AND A DEMAND FOR THE STRICT PROOF OF SUCH ALLEGATIONS.

1963-72-U: INTERNATIONAL UNION OF ELEVATOR CONSTRUCTORS, LOCAL 50 (APPLICANT) v. DOVER CORPORATION (CANADA) LTD., TURNBULL ELEVATOR DIVISION (RESPONDENT).

BEFORE: FRANK V. BOSCARIOL, VICE-CHAIRMAN, AND BOARD MEMBERS J. D. BELL AND P. J. O'KEEFFE.

APPEARANCES AT THE HEARING: W. G. PUNNETT AND J. HUNT FOR THE APPLICANT; M. G. MITCHNICK AND R. SUDDARD FOR THE RESPONDENT.

DECISION OF THE BOARD: MAY 30, 1972.

1. THE APPLICANT HAS APPLIED TO THE BOARD FOR RELIEF UNDER SECTION 123(3) OF THE LABOUR RELATIONS ACT.

2. AT THE HEARING OF THIS MATTER, ON MAY 19, 1972, THE PARTIES FILED WITH THE BOARD AN AGREED UPON STATEMENT OF THE FACTS, WHICH PROVIDES AS FOLLOWS:

1. THE APPLICANT AND THE RESPONDENT WERE PARTIES TO A COLLECTIVE AGREEMENT WHICH RAN FROM 1ST OF MAY, 1967 TO THE 30TH OF APRIL, 1972. NEGOTIATIONS FOR ITS AMENDMENT OR RENEWAL ARE PRESENTLY IN PROGRESS. THIS AGREEMENT CONTAINED AN ARTICLE SETTING OUT THE WORK JURISDICTION OF THE APPLICANT UNION.
2. ON APRIL 27, 1972, CHARLES HAWLEY, GENERAL SUPERINTENDENT FOR THE RESPONDENT ATTENDED AT THE BUILDING SITE IN BARRIE WHERE JOHN RICHARD BURFIELD AND RICHARD HERBERT YAKELEY WERE EMPLOYED BY THE RESPONDENT IN THE INSTALLATION OF ELEVATORS IN A BUILDING OWNED BY ONE W. W. WIGGINS AT 90 AND 98 HOLGATE AVENUE IN BARRIE. THERE ARE TWO BUILDINGS ON THE SITE AND ON THE 27TH OF APRIL THE WORK ON ONE OF THE BUILDINGS WAS AT A STAGE WHICH REQUIRED THE INSTALLATION OF MACHINE BEAMS WHICH ARE USED FOR THE SUPPORT OF THE MACHINERY BY WHICH THE ELEVATORS ARE OPERATED.

3. HAWLEY ENTERED INTO A DISCUSSION WITH BURFIELD WITH RESPECT TO THE INSTALLATION OF THE BEAMS AND WAS TOLD BY THE LATTER THAT HE MIGHT AS WELL LAY IT ON THE LINE, THAT HE WOULD BE UNABLE TO INSTALL THE BEAMS WITHOUT RECEIVING THE AUTHORIZATION OF THE UNION. HE ADVISED HAWLEY THAT IF HE WERE TO INSTALL THE BEAMS WITHOUT THE PRIOR AUTHORIZATION OF THE UNION, HE WOULD BE LIKELY TO LOSE HIS UNION CARD. YAKELEY TOOK THE SAME POSITION AS BURFIELD WITH RESPECT TO THE NEED FOR UNION AUTHORIZATION BEFORE HE COULD WORK ON THE BEAMS. HAWLEY THEREUPON ANNOUNCED THAT THE JOB WOULD HAVE TO BE CLOSED DOWN. BOTH MEN EXPRESSED THEIR WILLINGNESS TO RETURN TO THE SITE AND TO PERFORM ANY WORK AVAILABLE THERE OTHER THAN THE DISPUTED WORK. THE EVIDENCE SHOWED THERE WAS OTHER WORK AVAILABLE ON THE SITE. THE PARTIES AGREE THAT MR. YAKELEY AS A PERMIT HELPER WOULD NOT AT THE TIME BE QUALIFIED TO PLACE THE MACHINE BEAMS BY HIMSELF NOR COULD ANY MECHANIC ALONE DO THE JOB.
4. THIS SITUATION AROSE BECAUSE OF THE USE BY THE APPLICANT OF WHAT MAY BE TERMED, FOR THE SAKE OF CONVENIENCE, "PREFABRICATED" MACHINE BEAMS IN THE CONSTRUCTION OF ELEVATORS ON THE BUILDING SITE IN BARRIE. THESE MACHINE BEAMS HAD BEEN PARTIALLY MACHINED AND HAD HAD CERTAIN ATTACHMENTS PLACED UPON THEM AT THE FACTORY. THE APPLICANT CONTENDS THAT THIS MACHINING AND ATTACHMENT OF PARTS FALLS WITHIN THE EXCLUSIVE JURISDICTION OF THE APPLICANT UNION AS SET OUT IN THE COLLECTIVE AGREEMENT AND THAT THE USE OF THE PREFABRICATED BEAMS BY THE RESPONDENT IS A VIOLATION OF THE WORK JURISDICTION CLAUSE OF THE COLLECTIVE AGREEMENT.
5. THAT THERE WOULD BE A CONFRONTATION WITH REGARD TO THE WORK AT BARRIE MUST HAVE BEEN VERY OBVIOUS TO ALL CONCERNED AS SOON AS THE TYPE OF INSTALLATION BECAME KNOWN. THE EVIDENCE MAKES IT CLEAR THAT HAWLEY ANTICIPATED THAT THE MEN WORKING AT BARRIE MIGHT REFUSE TO DO THE WORK WHEN HE CAME TO DISCUSS THE MATTER ON THE SITE. IT, INDEED, WOULD APPEAR FROM THE GENERAL HISTORY OF THE ISSUE AS IT EMERGED IN THE EVIDENCE THAT THE DIE MAY WELL HAVE BEEN CAST BEFORE HAWLEY WENT TO BARRIE. IT CANNOT BE DENIED, HOWEVER, THAT HE WAS ENTITLED TO HOPE THAT IN THIS INSTANCE AS IN SOME OTHERS, THE ASSIGN-

MENT MIGHT HAVE BEEN ACCEPTED. HE WENT TO TEST THAT POSSIBILITY DESPITE WHAT TURNED OUT TO BE WELL FOUNDED ANTICIPATION AS TO THE RESULT.

6. THE EVIDENCE DISCLOSES THAT THE COLLECTIVE AGREEMENT PROVIDES FOR A JOINT INDUSTRY COMMITTEE COMPRISED OF MANAGEMENT AND LABOUR MEMBERS. THE COMMITTEE HAS POWER TO RESOLVE ALL QUESTIONS AND DISPUTES ARISING UNDER THE WORK JURISDICTION CLAUSE. THE PRESENT ISSUE HAS APPARENTLY BEEN BEFORE THIS COMMITTEE BUT IT HAS BEEN UNABLE TO RESOLVE THE DISPUTE.

7. IT SHOULD BE NOTED THAT MR. JAMES HUGHES, THE BUSINESS MANAGER OF INTERNATIONAL UNION OF ELEVATOR CONSTRUCTORS, LOCAL 50, CONFIRMED THAT BURFIELD AND YAKELEY HAD BEEN ADVISED NOT TO PERFORM THE DISPUTED WORK UNTIL AUTHORIZED TO DO SO. THE EVIDENCE ALSO INDICATED THAT IN SOME CASES THE COMPANY AND THE UNION HAD REACHED AN ARRANGEMENT WITH REGARD TO THE DISPUTED WORK AT CERTAIN SITES.

8. A LETTER DATED APRIL 21, 1972, WAS SENT BY THE MANUFACTURERS TO THE UNION REQUESTING THAT ALL MATTERS IN DISPUTE BE REFERRED TO ARBITRATION. AS OF THE DATE OF THIS APPLICATION, THE UNION HAS NOT REPLIED TO THAT LETTER."

3. THESE FACTS APPEAR TO BE ESSENTIALLY SIMILAR TO THOSE FOUND BY THE BOARD IN ITS RECENT DECISION DATED MAY 11, 1972, (BOARD FILE NO. 1928-72-U) WHERE THE BOARD, PURSUANT TO THE PROVISIONS OF SECTION 123(1) OF THE ACT, INTER ALIA, FOUND THAT THE STRIKE ENGAGED IN BY BURFIELD AND YAKELEY WAS CONTRARY TO THE PROVISIONS OF SECTION 63 OF THE ACT. THE APPLICANT IN THESE PROCEEDINGS NOW SEEKS CERTAIN REMEDIES PURSUANT TO SECTION 123(2) OF THE ACT WHICH IS PREMISED UPON THE FINDING BY THIS BOARD THAT THE RESPONDENT ON ITS PART, IN THESE CIRCUMSTANCES ENGAGED IN AN UNLAWFUL LOCKOUT CONTRARY TO SECTION 63 OF THE ACT.

4. UNDER SECTION 1(1)(1) OF THE ACT, A LOCKOUT IS DEFINED AS FOLLOWS:

(1) "LOCK-OUT" INCLUDES THE CLOSING OF A PLACE OF EMPLOYMENT, A SUSPENSION OF WORK OR A REFUSAL BY AN EMPLOYER TO CONTINUE TO EMPLOY A NUMBER OF HIS EMPLOYEES, WITH A VIEW

TO COMPEL OR INDUCE HIS EMPLOYEES, OR TO AID ANOTHER EMPLOYER TO COMPEL OR INDUCE HIS EMPLOYEES, TO REFRAIN FROM EXERCISING ANY RIGHTS OR PRIVILEGES UNDER THIS ACT OR TO AGREE TO PROVISIONS OR CHANGES IN PROVISIONS RESPECTING TERMS OR CONDITIONS OF EMPLOYMENT OR THE RIGHTS, PRIVILEGES OR DUTIES OF THE EMPLOYER, AN EMPLOYERS' ORGANIZATION, THE TRADE UNION, OR THE EMPLOYEES;"

5. HAVING CAREFULLY REVIEWED THE TOTALITY OF THE EVIDENCE IN THIS REGARD, WE FIND THAT THE APPLICANT HAS FAILED TO SATISFY US ON THE BALANCE OF PROBABILITIES, THAT THE ACTIONS OF THE RESPONDENT, FOLLOWING, FOLLOWING THE REFUSAL BY HAWLEY AND YAKELEY TO PERFORM THE WORK ASSIGNMENT INVOLVING THE INSTALLATION OF "PREFABRICATED" MACHINE BEAMS, CONSTITUTED A LOCK-OUT WITHIN THE MEANING OF SECTION 1(1)(1) OF THE ACT.

6. COUNSEL FOR THE APPLICANT ARGUES IN ADDITION, THAT THE ACTIONS OF THE RESPONDENT IN REFUSING TO EMPLOY THESE EMPLOYEES AT OTHER WORK ON THE SITE, CONSTITUTED, IN EFFECT, AN ATTEMPT BY IT TO ENFORCE UPON THEM ITS UNILATERAL INTERPRETATION OF ARTICLE 4 OF THE COLLECTIVE AGREEMENT DEALING WITH WORK JURISDICTION. WE CANNOT AGREE WITH THIS CONTENTION. IN THIS REGARD, THE PROVISIONS OF SECTION 37(1) OF THE ACT ARE RELEVANT AND PROVIDES AS FOLLOWS:

"EVERY COLLECTIVE AGREEMENT SHALL PROVIDE FOR THE FINAL AND BINDING SETTLEMENT BY ARBITRATION, WITHOUT STOPPAGE OF WORK, OF ALL DIFFERENCES BETWEEN THE PARTIES ARISING FROM THE INTERPRETATION, APPLICATION, ADMINISTRATION OR ALLEGED VIOLATION OF THE AGREEMENT, INCLUDING ANY QUESTION AS TO WHETHER A MATTER IS ARBITRABLE."

7. SURELY, THE LEGISLATURE IN PROHIBITING RECOURSE TO THE REMEDIES OF STRIKE AND LOCKOUT DURING THE OPERATION OF A COLLECTIVE AGREEMENT PURSUANT TO SECTION 63 OF THE ACT, WAS MINDFUL OF THE FACT THAT DISPUTES WOULD NEVERTHELESS ARISE BETWEEN THE PARTIES CONCERNING THE INTERPRETATION AND APPLICATION OF THE TERMS OF THE SAID AGREEMENT. THEREFORE, FOR THIS PURPOSE AND TO AVOID ANY DISRUPTION IN EMPLOYMENT DURING THE OPERATION OF THE SAID AGREEMENT, THE ALTERNATIVE REMEDY OF ARBITRATION WAS SUBSTITUTED. IN THIS REGARD WE NOTE THAT THE RESPONDENT IN COMPLIANCE WITH SUCH LEGISLATIVE INTENT, ATTEMPTED TO HAVE THE DISPUTE, WHICH IT SAW FORTHCOMING, RESOLVED THROUGH ARBITRATION SOME SIX DAYS PRIOR TO ITS INCEPTION. NOT ONLY DID THE APPLICANT FAIL TO

RESPOND TO THE PROPOSAL BUT IT WENT SO FAR AS TO SPECIFICALLY ADVISE THE EMPLOYEES NOT TO PERFORM THE WORK IN QUESTION. THE BOARD, IN ITS DECISION DATED MAY 11, 1972, (BOARD FILE NO. 1928-72-U) HAS FOUND SUCH ACTION TO BE UNLAWFUL, AND AS A RESULT HAS DIRECTED THE TWO EMPLOYEES TO PROCEED WITH THE INSTALLATION OF THE MACHINE BEAMS WITHOUT ANY FURTHER INTERFERENCE FROM THE APPLICANT HEREIN.

8. HAVING REGARD THEREFORE TO ALL OF THE CIRCUMSTANCES HEREIN, WE ARE NOT SATISFIED THAT THE ACTIONS TAKEN BY THE RESPONDENT IN THIS REGARD CONSTITUTED AN UNLAWFUL LOCKOUT WITHIN THE MEANING OF THE ACT.

9. WE THEREFORE FIND THAT THERE IS NO REMEDY AVAILABLE TO THE APPLICANT IN THESE CIRCUMSTANCES UNDER THE PROVISIONS OF SECTION 123(2) OF THE ACT AND THIS APPLICATION IS ACCORDINGLY DISMISSED.

18768-70-R: CSAO NATIONAL (INC.) (APPLICANT) V. THE GREATER NIAGARA GENERAL HOSPITAL (RESPONDENT) V. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 772 (INTERVENER).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBER O. HODGES:

APPEARANCES AT THE HEARING: IAN SCOTT AND TERRENCE O'DELL FOR THE APPLICANT; J. W. HEALY, Q.C., AND M. G. MITCHNICK FOR THE RESPONDENT; NO ONE FOR THE INTERVENER.

DECISION OF J. H. BROWN, Q.C., AND BOARD MEMBER O. HODGES:
MAY 30, 1972.

1. BY A DECISION DATED FEBRUARY 19, 1971, FOR THE REASONS GIVEN IN THE OAKVILLE TRAFALGAR MEMORIAL HOSPITAL ASSOCIATION CASE, OLRB M.R. FEBRUARY 1971 P. 70, THE BOARD FOUND THAT THE APPLICANT HAD NOT ESTABLISHED ITS STATUS AS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1) (J) (NOW SECTION 1(1)(N)) OF THE LABOUR RELATIONS ACT AND ACCORDINGLY DISMISSED THE INSTANT APPLICATION.

2. THE APPLICANT IN THE INSTANT CASE WAS THE SAME APPLICANT AS IN THE OAKVILLE TRAFALGAR MEMORIAL HOSPITAL ASSOCIATION CASE (SUPRA). IN ITS DECISION OF FEBRUARY 19, 1971 IN THE LATTER CASE, THE BOARD FOUND THAT THE APPLICANT WAS NOT A TRADE UNION WITHIN THE MEANING OF THE ACT BECAUSE OF ITS DISCRIMINATION AGAINST PROVISIONAL MEMBERS WITH RESPECT TO THE RIGHTS AND PRIVILEGES WHICH THEY CAN EXERCISE WITHIN THE APPLICANT'S ORGANIZATION AND ACCORDINGLY DISMISSED THE APPLICATION. BY LETTER DATED MARCH 10, 1971, COUNSEL FOR THE APPLICANT REQUESTED THAT THE BOARD RECONSIDER ITS DECISION OF FEBRUARY 19, 1971, PURSUANT TO SECTION 79(1) (NOW SECTION 95(1)) OF THE ACT. FOR REASONS GIVEN

IN A DECISION DATED APRIL 6, 1971 IN THE OAKVILLE TRAFALGAR MEMORIAL HOSPITAL ASSOCIATION CASE, OLRB M.R. APRIL 1971 P. 247, THE BOARD UPHELD ITS FINDING THAT THE APPLICANT WAS NOT A TRADE UNION WITHIN THE MEANING OF THE ACT AND DENIED THE REQUEST OF COUNSEL FOR THE APPLICANT.

3. THE APPLICANT THEREUPON APPLIED TO THE ONTARIO HIGH COURT FOR AN ORDER IN LIEU OF A WRIT OF CERTIORARI QUASHING THE DECISIONS OF THE BOARD DATED FEBRUARY 19, 1971 AND APRIL 6, 1971 IN THE OAKVILLE TRAFALGAR MEMORIAL HOSPITAL ASSOCIATION CASE (SUPRA). BY A JUDGMENT OF THE HIGH COURT IN RE CSAO NATIONAL (INC.) AND OAKVILLE TRAFALGAR MEMORIAL HOSPITAL ASSOCIATION CASE [1972] 1 O.R. 609, LACOURCIERE, J. FOUND THAT THE ABOVE DETERMINATION WITH RESPECT TO THE STATUS OF THE APPLICANT WAS A MATTER WITHIN THE EXCLUSIVE JURISDICTION OF THE BOARD AND WAS NOT REVIEWABLE ON CERTIORARI AND DISMISSED THE APPLICATION. THE APPLICANT APPEALED THE JUDGMENT OF LACOURCIERE, J. TO THE ONTARIO COURT OF APPEAL. IN A JUDGMENT IN CSAO NATIONAL (INC.) V. OAKVILLE TRAFALGAR MEMORIAL HOSPITAL ASSOCIATION AND O.L.R.B. CASE, 72 CLLC 14,595, THE COURT OF APPEAL HELD THAT THROUGH AN ERROR OF LAW IN THE INTERPRETATION OF SECTION 1(1)(N) OF THE LABOUR RELATIONS ACT, APPARENT ON THE FACE OF THE RECORD, THE BOARD ASSUMED A JURISDICTION IT DID NOT HAVE TO CREATE AN UNJUSTIFIED IMPEDIMENT TO THE RIGHT OF THE APPLICANT TO CERTIFICATION, SUBJECT TO THE FULFILMENT OF THE EXPRESS CONDITIONS TO CERTIFICATION PROVIDED BY THE STATUTE. IN THE RESULT JESSUP, J.A. (WITH THE CONCURRENCE OF ARNUP, J.A. AND MCGILLIVRAY, J.A.) ALLOWED THE APPEAL AND SET ASIDE THE DECISION OF LACOURCIERE, J. AND IN ITS PLACE ISSUED AN ORDER QUASHING THE BOARD'S FINDING IN ITS DECISIONS OF FEBRUARY 19, 1971 AND APRIL 6, 1971, THAT THE APPLICANT WAS NOT A TRADE UNION WITHIN THE MEANING OF THE ACT AND REMITTED THE APPLICATION FOR CERTIFICATION OF THE APPLICANT TO THE BOARD.

4. THE APPLICATION FOR CERTIFICATION MADE BY THE APPLICANT FOR A UNIT OF EMPLOYEES OF OAKVILLE TRAFALGAR MEMORIAL HOSPITAL ASSOCIATION (BOARD FILE NO. 18767-70-R) AND TWO APPLICATIONS MADE BY THE APPLICANT FOR UNITS OF EMPLOYEES OF THE HAMILTON HEALTH ASSOCIATION AT ITS HAMILTON AND DISTRICT SCHOOL OF MEDICAL TECHNOLOGY (BOARD FILE NO. 18772-70-R) AND AT ITS CHEDOKE GENERAL AND CHILDREN'S HOSPITAL (BOARD FILE NO. 18771-70-R) WERE HEARD BY THE BOARD ON JANUARY 4, 1971. THE PARTIES TO ALL THREE APPLICATIONS AGREED THAT THE EVIDENCE ADDUCED BY THE APPLICANT WITH RESPECT TO ITS STATUS WOULD APPLY TO ALL THREE APPLICATIONS. APPLICATIONS FOR CERTIFICATION MADE BY THE APPLICANT FOR UNITS OF EMPLOYEES OF THE OSHAWA GENERAL HOSPITAL (BOARD FILE NO. 18769-70-R), NIAGARA LABORATORIES, DIVISION OF MEDICAL DATA SCIENCES LIMITED (BOARD FILE NO. 18770-70-R) AND THE INSTANT APPLICATION FOR A UNIT OF EMPLOYEES OF THE RESPONDENT WERE HEARD BY THE BOARD ON JANUARY 6, 1971. UPON THE

AGREEMENT OF ALL PARTIES TO THE LATTER THREE APPLICATIONS, THE SAME EVIDENCE WHICH WAS ADDUCED AT THE JANUARY 4TH HEARING WITH RESPECT TO THE STATUS OF THE APPLICANT WAS MADE APPLICABLE TO THE APPLICATIONS HEARD ON JANUARY 6TH. ALL PARTIES TO THE SIX APPLICATIONS WERE AFFORDED AN OPPORTUNITY TO SUBMIT ORAL AND WRITTEN ARGUMENT TO THE BOARD RELATING TO THE STATUS OF THE APPLICANT.

5. HAVING REGARD TO THE EVIDENCE ADDUCED BY THE APPLICANT RELATING TO ITS STATUS AND THE REPRESENTATIONS OF THE APPLICANT AND ALL OF THE RESPONDENTS, THE BOARD, FOR THE REASONS SET FORTH IN ITS DECISION DATED FEBRUARY 19, 1971 IN THE OAKVILLE TRAFALGAR MEMORIAL HOSPITAL ASSOCIATION CASE (SUPRA), FOUND THAT THE APPLICANT WAS NOT A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) (NOW SECTION 1(1)(N)) OF THE ACT AND DISMISSED THAT APPLICATION. BY DECISIONS OF THE SAME DATE IN THE INSTANT APPLICATION AND THE OTHER FOUR APPLICATIONS, THE BOARD FOUND THAT THE APPLICANT WAS NOT A TRADE UNION WITHIN THE MEANING OF THE ACT FOR THE REASONS GIVEN IN THE OAKVILLE TRAFALGAR MEMORIAL HOSPITAL ASSOCIATION CASE AND DISMISSED ALL FIVE APPLICATIONS.

6. BY LETTER DATED FEBRUARY 15, 1972, COUNSEL FOR THE APPLICANT REQUESTED THAT THE BOARD EXERCISE ITS JURISDICTION UNDER SECTION 95(1) OF THE ACT TO RECONSIDER ITS DECISION OF FEBRUARY 19, 1971 IN THE INSTANT CASE, AND ITS DECISIONS OF THE SAME DATE IN THE HAMILTON HEALTH ASSOCIATION CASE (BOARD FILE NO. 18772-70-R); THE HAMILTON HEALTH ASSOCIATION CASE (BOARD FILE NO. 18771-70-R); OSHAWA GENERAL HOSPITAL CASE (BOARD FILE NO. 18769-70-R) AND NIAGARA LABORATORIES, DIVISION OF MEDICAL DATA SCIENCES LIMITED CASE (BOARD FILE NO. 18770-70-R) HAVING REGARD TO THE ABOVE REFERRED TO JUDGMENT OF THE ONTARIO COURT OF APPEAL IN CSAO NATIONAL (INC.) V. OAKVILLE TRAFALGAR MEMORIAL HOSPITAL ASSOCIATION AND O.L.R.B. CASE (SUPRA).

7. THE DIVISION OF THE BOARD WHICH WAS ASSIGNED TO HEAR THE INSTANT APPLICATION AND THE FIVE OTHER APPLICATIONS OF THE APPLICANT CITED ABOVE WAS COMPOSED OF J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, BOARD MEMBERS O. HODGES AND R. W. TEAGLE. THE SAID DIVISION OF THE BOARD HEARD ALL SIX APPLICATIONS AND UNANIMOUSLY ISSUED THE DECISIONS DATED FEBRUARY 19, 1971 FOR THE BOARD IN ALL OF THE APPLICATIONS AS WELL AS THE DECISION IN THE OAKVILLE TRAFALGAR MEMORIAL HOSPITAL ASSOCIATION CASE DATED APRIL 6, 1971, ON THE REQUEST FOR RECONSIDERATION MADE BY COUNSEL FOR THE APPLICANT. SUBSEQUENT TO THE BOARD ISSUING THE FOREGOING DECISIONS, BOARD MEMBER R. W. TEAGLE DIED.

8. HAVING REGARD TO THE DEATH OF MR. TEAGLE, THE BOARD WAS IN SOME DOUBT AS TO THE MANNER IN WHICH IT SHOULD DEAL WITH THE REQUEST FOR RECONSIDERATION MADE BY COUNSEL FOR THE APPLICANT WITH RESPECT TO THE BOARD'S DECISION OF FEBRUARY 19, 1971 IN THE INSTANT APPLICATION AND THE DECISIONS OF THE BOARD OF THE SAME DATE IN THE OTHER FOUR ABOVE

REFERRED TO APPLICATIONS FOR CERTIFICATION. IN ALL THE CIRCUMSTANCES THE BOARD DECIDED THAT THE MOST PRUDENT COURSE OF ACTION WAS TO LIST THE INSTANT APPLICATION AND THE OTHER FOUR APPLICATIONS FOR CONTINUATION OF HEARING AT WHICH TIME ALL PARTIES TO THE SAID APPLICATIONS WERE CALLED UPON TO MAKE THEIR REPRESENTATIONS AS TO THE MANNER IN WHICH THE BOARD SHOULD PROCEED. NO OBJECTION WAS MADE BY ANY PARTY TO THE ABOVE PROCEDURE ADOPTED BY THE BOARD.

9. THE HEARING OF THE ABOVE APPLICATIONS ON APRIL 24, 1972 WAS PRESIDED OVER BY THE TWO REMAINING MEMBERS OF THE DIVISION OF THE BOARD WHO WERE SEIZED WITH THE APPLICATIONS, NAMELY J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBER O. HODGES. AT THE OUTSET OF THE HEARING, COUNSEL FOR THE APPLICANT REQUESTED THAT ANOTHER EMPLOYER REPRESENTATIVE BOARD MEMBER BE ASSIGNED TO THE DIVISION OF THE BOARD SEIZED WITH THE SAID APPLICATIONS TO REPLACE BOARD MEMBER R. W. TEAGLE. THIS REQUEST WAS OPPOSED BY COUNSEL APPEARING FOR THE RESPONDENTS IN THE FIVE APPLICATIONS CONCERNED.

10. THE SUBMISSIONS ADVANCED BY COUNSEL FOR THE RESPONDENTS IN SUPPORT OF THEIR OPPOSITION TO THE REQUEST OF COUNSEL FOR THE APPLICANT ARE OUTLINED BELOW. BY SECTION 91(9) OF THE ACT, THE CHAIRMAN OR A VICE-CHAIRMAN, ONE MEMBER REPRESENTATIVE OF EMPLOYERS AND ONE MEMBER REPRESENTATIVE OF EMPLOYEES CONSTITUTE A QUORUM AND ARE SUFFICIENT FOR THE EXERCISE OF ALL THE JURISDICTION AND POWERS OF THE BOARD. AS A RESULT OF THE DEATH OF THE REPRESENTATIVE OF EMPLOYERS, BOARD MEMBER R. W. TEAGLE, THERE IS NO LONGER THE QUORUM REQUIRED BY SECTION 91(9) TO DEAL WITH THE SAID APPLICATIONS. MOREOVER, IN THE EVENT OF THE DEATH OF A BOARD MEMBER WHO WAS SEIZED OF ANY APPLICATION OR PROCEEDING BEFORE THE BOARD, THERE IS NO PROVISION IN SECTION 91 FOR THE SUBSTITUTION OF ANOTHER BOARD MEMBER IN HIS PLACE SO AS TO CONSTITUTE THE QUORUM REQUIRED UNDER SUBSECTION (9). FURTHER, ALTHOUGH SECTION 95(1) OF THE ACT PROVIDES THAT THE BOARD MAY AT ANY TIME, IF IT CONSIDERS IT ADVISABLE TO DO SO, RECONSIDER ANY DECISION, ORDER, DIRECTION, DECLARATION OR RULING MADE BY IT AND VARY OR REVOKE ANY SUCH DECISION, ORDER, DIRECTION, DECLARATION OR RULING, ANY SUCH RECONSIDERATION CAN ONLY BE MADE BY THE QUORUM OF THE BOARD THAT MADE THE INITIAL DECISION, ORDER, DIRECTION, DECLARATION OR RULING. ACCORDINGLY, THE BOARD IS WITHOUT JURISDICTION TO COMPLY WITH THE REQUEST OF COUNSEL FOR THE APPLICANT. EVEN ASSUMING, HOWEVER, THAT THE BOARD DOES HAVE THE JURISDICTION TO MAKE THE SUBSTITUTION OF A BOARD MEMBER IN THE INSTANT CIRCUMSTANCES, THE SUBSTITUTED BOARD MEMBER WOULD NOT BE IN A POSITION TO RECONSIDER THE DECISIONS MADE BY THE ORIGINAL QUORUM OF THE BOARD SEIZED WITH THE FIVE APPLICATIONS IN QUESTION SINCE HE DID NOT HEAR THE EVIDENCE AND SUBMISSIONS UPON WHICH THE ORIGINAL QUORUM OF THE BOARD BASED ITS DECISION. TO ALLOW A NEW BOARD MEMBER TO PARTICIPATE IN A REQUEST FOR RECONSIDERATION OF A DECISION WITH RESPECT TO WHICH HE PREVIOUSLY HAD NO PART WOULD BE A DENIAL OF NATURAL JUSTICE TO THE PARTIES TO THE PRO-

CEEDINGS IN QUESTION. ACCORDINGLY, THE DECISION DATED FEBRUARY 19, 1971 IN THE FIVE APPLICATIONS, INCLUDING THE INSTANT APPLICATION, WITH RESPECT TO WHICH COUNSEL FOR THE APPLICANT IS REQUESTING RECONSIDERATION MUST STAND AND CANNOT BE REVISED OR REVOKED.

11. COUNSEL FOR THE APPLICANT MADE THE FOLLOWING SUBMISSIONS IN SUPPORT OF HIS REQUEST THAT ANOTHER BOARD MEMBER BE SUBSTITUTED FOR BOARD MEMBER R. W. TEAGLE. ALTHOUGH SUBSECTION (9) OF SECTION 91 DEFINES A QUORUM AS BEING COMPOSED OF A CHAIRMAN AND TWO BOARD MEMBER REPRESENTATIVES OF EMPLOYERS AND EMPLOYEES AND BY SUBSECTION (10) A DIVISION OF THE BOARD MUST BE COMPOSED OF A QUORUM, THERE IS NO LIMITATION IN SECTION 91 TO ANOTHER BOARD MEMBER BEING ASSIGNED TO REPLACE A BOARD MEMBER COMPOSING A QUORUM IN THE EVENT OF HIS DEATH. WITH RESPECT TO THE ARGUMENT ADVANCED BY COUNSEL FOR THE RESPONDENTS THAT ANY SUCH SUBSTITUTION WOULD BE A DENIAL OF NATURAL JUSTICE, COUNSEL FOR THE APPLICANT ARGUES THAT ALL OF THE MATERIAL FACTS RELEVANT TO THE REQUEST FOR RECONSIDERATION ARE SET OUT IN THE BOARD'S DECISION OF FEBRUARY 19, 1971 IN THE OAKVILLE TRAFALGAR MEMORIAL HOSPITAL ASSOCIATION CASE. MOREOVER, THE COURT OF APPEAL IN ITS DECISION QUASHED THE ONLY DETERMINATION MADE BY THE BOARD IN THE ABOVE DECISION, NAMELY THAT THE APPLICANT WAS NOT A TRADE UNION WITHIN THE MEANING OF THE ACT. IN THESE CIRCUMSTANCES, THE SUBSTITUTION OF ANOTHER BOARD MEMBER FOR MR. R. W. TEAGLE FOR PURPOSES OF RECONSIDERATION OF THE BOARD'S DECISIONS OF FEBRUARY 19, 1971 IN THE FIVE APPLICATIONS CONCERNED IS IN NO WAY PREJUDICIAL TO THE POSITION OF THE NAMED RESPONDENTS AND ACCORDING IT CANNOT BE SAID THAT THERE WOULD BE ANY DENIAL OF NATURAL JUSTICE.

12. IN OUR VIEW, A REQUEST FOR RECONSIDERATION FORMS A PART OF THE SAME PROCEEDING AND CANNOT BE CHARACTERIZED AS A NEW PROCEEDING. THAT BEING SO, ONLY THE QUORUM CONSTITUTING THE DIVISION OF THE BOARD WHICH HEARD AN APPLICATION OR OTHER PROCEEDING AND MADE DETERMINATIONS ON THE ISSUES INVOLVED CAN ENTERTAIN AND MAKE A DISPOSITION ON A REQUEST FOR RECONSIDERATION OF THE DECISION MADE FOR THE BOARD. WE FIND NO JURISDICTION IN SECTION 91 OR ANY OTHER SECTION OF THE ACT WHICH ALLOWS ANOTHER BOARD MEMBER TO BE SUBSTITUTED IN THE PLACE OF A DECEASED BOARD MEMBER WHO WAS A MEMBER OF THE QUORUM OF THE BOARD WHICH WAS ASSIGNED TO HEAR AND RENDERED A DECISION ON AN APPLICATION OR OTHER PROCEEDING BEFORE THE BOARD.

13. WE ARE SYMPATHETIC TO THE POSITION OF THE APPLICANT. HOWEVER, HAVING REGARD TO THE FACT THAT THE QUORUM WHICH WAS SEIZED WITH THE INSTANT APPLICATION AND THE OTHER FOUR APPLICATIONS WITH RESPECT TO WHICH COUNSEL FOR THE APPLICANT IS REQUESTING RECONSIDERATION NO LONGER EXISTS BY REASON OF THE DEATH OF BOARD MEMBER R. W. TEAGLE AND IN THE ABSENCE OF ANY AUTHORITY IN THE ACT, WE ARE CONSTRAINED TO FIND THAT ANOTHER BOARD MEMBER CANNOT BE SUBSTITUTED FOR MR. TEAGLE. FUR-

THER, SINCE THE TWO REMAINING MEMBERS OF THE DIVISION OF THE BOARD SEIZED WITH THE INSTANT APPLICATION AND THE OTHER FOUR APPLICATIONS REFERRED TO ABOVE NO LONGER CONSTITUTE A QUORUM, WE HAVE NO AUTHORITY TO ENTERTAIN THE REQUEST FOR RECONSIDERATION MADE BY COUNSEL FOR THE APPLICANT WITH RESPECT TO THE INSTANT APPLICATION AND THE REMAINING FOUR APPLICATIONS WITH RESPECT TO WHICH COUNSEL FOR THE APPLICANT HAS ALSO REQUESTED RECONSIDERATION.

1500-71-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. SUNNYBROOK FOOD MARKET (KEELE) LIMITED (RESPONDENT) V. LOCAL 206, NATIONAL COUNCIL OF CANADIAN LABOUR (INTERVENER) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS D. B. ARCHER AND J. E. C. ROBINSON, Q.C.

APPEARANCES AT THE HEARING: CLIFFORD AND HAROLD JURCHUK FOR THE APPLICANT; B. W. BINNING, S. BERNARDO AND M. GOODBAUM FOR THE RESPONDENT; LEON J. LABONTE FOR THE INTERVENER; NO ONE APPEARING FOR THE OBJECTORS.

DECISION OF VICE-CHAIRMAN RORY F. EGAN AND BOARD MEMBER J. E. C. ROBINSON, Q.C.:
MAY 31, 1972.

1. THE BOARD FINDS THAT THE APPLICANT AND THE INTERVENER ARE TRADE UNIONS WITHIN THE MEANING OF SECTION 1(1)(N) OF THE LABOUR RELATIONS ACT.
2. THE APPLICANT IN THE PRESENT CASE FILED AN INTERVENTION IN AN APPLICATION FOR CERTIFICATION IN BOARD FILE NO. 1834-72-R BROUGHT BY THE LOCAL 206, NATIONAL COUNCIL OF CANADIAN LABOUR, THE INTERVENER HEREIN. BOTH CASES WERE HEARD AT THE SAME TIME AND THE CONCURRENT DECISIONS ARE TO BE READ TOGETHER.
3. THE APPLICANT IN THE PRESENT CASE SEEKS TO BE CERTIFIED FOR A BARGAINING UNIT COMPRISING "PART-TIME" EMPLOYEES OF THE RESPONDENT AT GUELPH WITH CERTAIN EXCEPTIONS NOT IMMEDIATELY RELEVANT. THE INTERVENER HEREIN SEEKS A BARGAINING UNIT COMPRISING "PART-TIME" EMPLOYEES OF THE RESPONDENT IN ITS STORES IN ONTARIO WITH CERTAIN EXCEPTIONS NOT IMMEDIATELY RELEVANT.
4. IN BOARD FILE NO. 1834-72-R, THE APPLICANT AND THE INTERVENER HEREIN SEEK UNITS CONSISTENT WITH THOSE THEY ASK FOR IN THIS APPLICATION. AS ALREADY INDICATED, THEY APPEAR IN REVERSE ROLES AS INTERVENER AND APPLICANT RESPECTIVELY.
5. THE RESPONDENT SUPPORTS THE DEFINITION OF THE BARGAINING

UNIT PROPOSED BY THE INTERVENER IN THE PRESENT CASE AND THE APPLICANT IN BOARD FILE No. 1834-72-R. THE REASON FOR THE SUPPORT IS THAT THE RESPONDENT AND THE INTERVENER HEREIN HAVE A COLLECTIVE BARGAINING HISTORY AND A COLLECTIVE AGREEMENT COVERING ALL "FULL-TIME" EMPLOYEES OF THE RESPONDENT IN ITS STORES IN ONTARIO. THE RESPONDENT OPERATES STORES AT WHITBY, ROUGE HILL IN PICKERING TOWNSHIP, PETERBOROUGH, OSHAWA, GUELPH AND AT LAWRENCE AVENUE, KEELE STREET AND FINCH AVENUE IN METROPOLITAN TORONTO. IT IS SUBMITTED THAT LOGIC AND CONVENIENCE DICTATE THAT IN SUCH CIRCUMSTANCES THE APPROPRIATE UNIT FOR THE "PART-TIME" EMPLOYEES SHOULD COVER THE SAME GEOGRAPHIC AREA AS THAT DESCRIBED IN THE COLLECTIVE AGREEMENT.

6. THE BOARD HAS CONSIDERED THE REPRESENTATIONS OF THE PARTIES AND FINDS A PROVINCE-WIDE BARGAINING UNIT TO BE INAPPROPRIATE. (SEE RETAIL CLERKS INTERNATIONAL ASSOCIATION V. CANADA SAFEWAY LIMITED, O.L.R.B. MONTHLY REPORT P. 262). THE BOARD THEREFORE FINDS, WITH RESPECT TO THE PRESENT APPLICATION, THAT ALL EMPLOYEES OF THE RESPONDENT AT ITS STORES IN GUELPH, SAVE AND EXCEPT DEPARTMENT MANAGERS, HEAD OFFICE AND WAREHOUSE STAFF AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND LOCAL UNION 206, NATIONAL COUNCIL OF CANADIAN LABOUR, EFFECTIVE THE 1ST DAY OF JANUARY 1971, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

7. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT NOT LESS THAN THIRTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON APRIL 19, 1972, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 92(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

8. THE BOARD IS FURTHER SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT NOT LESS THAN THIRTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE INTERVENER ON APRIL 19, 1972, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 92(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

9. A REPRESENTATION VOTE WILL BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT. ALL EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

10. VOTERS WILL BE GIVEN A CHOICE BETWEEN:
- RETAIL CLERKS INTERNATIONAL ASSOCIATION
AND
LOCAL 206, NATIONAL COUNCIL OF CANADIAN LABOUR
AND
NO TRADE UNION.

11. THE MATTER IS REFERRED TO THE REGISTRAR.

DECISION OF BOARD MEMBER D. B. ARCHER: MAY 31, 1972.

UNDER THE CIRCUMSTANCES OF THIS CASE, I WOULD HAVE FOUND THE INTERVENER, LOCAL 206, NATIONAL COUNCIL OF CANADIAN LABOUR, WAS ENTITLED TO A PROVINCE-WIDE UNIT.

[THE BARGAINING UNITS - FOUND TO BE APPROPRIATE IN FILE NO. 1834 ARE SET OUT ON PAGE 107 IN PART II OF THIS REPORT].

832-71-U: ANTHONY PITOSCIA (COMPLAINANT) V. SEVEN-UP (ONTARIO) LIMITED (RESPONDENT).

- AND -

1056-71-U: ANTHONY PITOSCIA (COMPLAINANT) V. SEVEN-UP (ONTARIO) LIMITED (RESPONDENT).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS O. HODGES AND J. E. C. ROBINSON, Q.C.

APPEARANCES AT THE HEARING: B. A. DUNN, D. WAGNER AND A. PITOSCIA FOR THE COMPLAINANT; A. J. CLARK, Q.C. AND P. M. CAMPBELL FOR THE RESPONDENT.

DECISION OF VICE-CHAIRMAN RORY F. EGAN AND BOARD MEMBER J. E. C. ROBINSON, Q.C.: MAY 31, 1972.

1. THE BOARD DIRECTS THAT THE ABOVE COMPLAINTS BE AND THEY ARE HEREBY CONSOLIDATED.
2. THIS IS A COMPLAINT UNDER SECTION 79 OF THE LABOUR RELATIONS ACT IN WHICH THE COMPLAINANT ALLEGES THAT HE HAS BEEN DEALT WITH BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF SECTION 58 OF THE ACT. THE COMPLAINANT REQUESTS THAT HE BE REINSTATED BY THE RESPONDENT TO HIS POSITION AS AN ADVANCE SALESMAN AND COMPENSATED FOR LOST WAGES AND COMMISSION.
3. PITOSCIA HAD BEEN EMPLOYED BY THE RESPONDENT COMPANY SINCE

MARCH 1961. HE WAS A DRIVER SALESMAN DURING THE MOST OF HIS EMPLOYMENT. IN OCTOBER OF 1970, WHEN A NEW SYSTEM OF SALES WAS INTRODUCED BY THE RESPONDENT, HE BECAME AN ADVANCE SALESMAN. THIS MEANT THAT HE CEASED TO DELIVER THE RESPONDENT'S GOODS AND WAS ENGAGED IN SELLING AND PROMOTING THEM WITHIN A DESIGNATED DISTRICT. ON AUGUST 6, 1971, PITOSCIA WAS REMOVED FROM THE POSITION OF ADVANCE SALESMAN AND REVERTED TO THE JOB OF DRIVER SALESMAN. THE LATTER JOB IS LESS DESIRABLE THAN THAT OF ADVANCE SALESMAN AND THE MOVE WAS VIEWED AS A DEMOTION. THE COMPLAINANT LAUNCHED PROCEEDINGS UNDER THE LABOUR RELATIONS ACT ALLEGING THAT THE RESPONDENT HAD VIOLATED THE ACT IN DEMOTING HIM. ON SEPTEMBER 9, 1971, THE RESPONDENT SUSPENDED PITOSCIA. THE SUSPENSION TOOK PLACE THE DAY AFTER THE VISIT OF A LABOUR RELATIONS BOARD FIELD OFFICER TO THE RESPONDENT WITH REGARD TO THE COMPLAINT ON DEMOTION. ON SEPTEMBER 13TH, THE RESPONDENT DISCHARGED PITOSCIA. THE COMPLAINANT SUBMITS THAT HE WAS DEMOTED AND SUBSEQUENTLY DISCHARGED BY THE RESPONDENT BECAUSE HE, TO THE KNOWLEDGE OF THE RESPONDENT, WAS AN ACTIVE MEMBER AND SUPPORTER OF THE INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK AND DISTILLERY WORKERS OF AMERICA, AFL-CIO-CLC, HEREINAFTER CALLED THE "UNION".

4. THE RESPONDENT'S POSITION IS THAT PITOSCIA WAS FIRST PROMOTED TO ADVANCE SALESMAN PURELY ON THE GROUNDS OF SENIORITY, THAT HE WAS DEMOTED FOR FAILURE TO PERFORM HIS JOB AS ADVANCE SALESMAN TO THE SATISFACTION OF THE RESPONDENT AND THAT HE WAS DISCHARGED BECAUSE OF DISCREPANCIES IN HIS ACCOUNTS AS DISCLOSED BY SPOT CHECKS MADE BY THE RESPONDENT. THE RESPONDENT DENIES THAT PITOSCIA'S CONNECTION WITH THE UNION HAD ANYTHING TO DO WITH THE WHOLE MATTER.

5. THE EVIDENCE SHOWS THAT THE UNION, WHICH REPRESENTS EMPLOYEES OF THE RESPONDENT AT LONDON, HAMILTON, WELLAND AND KITCHENER-WATERLOO, HAS BEEN ATTEMPTING TO ORGANIZE THE EMPLOYEES OF THE RESPONDENT IN MALTON SINCE SEPTEMBER 1969. SINCE THAT DATE, A NUMBER OF UNSUCCESSFUL APPLICATIONS FOR CERTIFICATION HAVE BEEN MADE. THE FIRST OF THESE, MADE IN NOVEMBER 1969, WAS WITHDRAWN BY THE APPLICANT. A SECOND APPLICATION WAS MADE IN JANUARY 1970 RESULTING IN A PREHEARING VOTE ON FEBRUARY 19, 1970, IN WHICH THE APPLICANT DID NOT OBTAIN SUFFICIENT VOTES. A SECOND VOTE WAS DIRECTED AS THE RESULT OF THE APPLICANT'S OBJECTION TO THE COMPANY'S CONDUCT PRIOR TO THE FEBRUARY 19TH VOTE. THE NEW VOTE WAS HELD ON JUNE 1ST, 1970 AND THE UNION AGAIN FAILED TO OBTAIN THE REQUIRED NUMBER OF VOTES. ON DECEMBER 12, 1970, A THIRD APPLICATION WAS MADE. ALTHOUGH A PREHEARING VOTE WAS HELD, THE BALLOTS WERE NOT COUNTED BECAUSE AS THE RESULT OF A FINDING BY THE BOARD FOLLOWING AN EXAMINER'S REPORT WITH RESPECT TO 22 PERSONS, THE UNION MEMBERSHIP PROVED INSUFFICIENT TO WARRANT A VOTE. THE APPLICATION WAS DISMISSED ON APRIL 13, 1971.

6. DURING THE COURSE OF THE FOREGOING CAMPAIGNS, THE UNION

FILED A NUMBER OF COMPLAINTS ALLEGING DISCRIMINATION BY THE RESPONDENT AGAINST EMPLOYEES BECAUSE OF UNION ACTIVITY. NOT ALL THE COMPLAINTS WENT TO A HEARING AND NONE RESULTED IN DECISIONS BY THE BOARD ADVERSE TO THE RESPONDENT. THE LATEST DECISION INVOLVED AN EMPLOYEE NAMED COOK. THIS WAS DISMISSED BY THE BOARD ON FEBRUARY 25, 1971.

7. IN THE EVIDENCE AT THIS HEARING REFERRED WAS MADE TO CERTAIN STATEMENTS AND PUBLICATIONS ISSUED BY THE RESPONDENT FROM TIME TO TIME DURING THE UNION'S ORGANIZATIONAL DRIVES. ONE OF THESE RESULTED IN THE ORDERING OF A NEW VOTE AS INDICATED PREVIOUSLY.

8. IRVING F. KEEGAN, PRESIDENT OF THE RESPONDENT COMPANY, STATED THAT HE HAD INDICATED TO EMPLOYEES THAT IN HIS OPINION THERE WAS NOTHING TO BE GAINED BY THEM IN BEING REPRESENTED BY A UNION. HE SAID THAT HE DID NOT WANT A UNION BUT THAT THAT WAS A CHOICE FOR THE EMPLOYEES TO MAKE. IT WAS MADE ABUNDANTLY CLEAR THAT, TO THE EXTENT PERMITTED BY THE ACT, THE RESPONDENT IS ANTI-UNION.

9. THE UNION COMMENCED A NEW ORGANIZATIONAL DRIVE IN AUGUST 1971. THE EVIDENCE WAS THAT THIS CAMPAIGN WAS TO BE BUILT AROUND ANTHONY PITOSCIA WHOM THE UNION REGARDED AS A KEY EMPLOYEE. THERE IS NO EVIDENCE, HOWEVER, THAT THE ROLE OF KEY ORGANIZER ALLOTTED TO PITOSCIA EVER BECAME KNOWN TO THE RESPONDENT. PITOSCIA DID APPEAR AS REPRESENTATIVE OF THE UNION AND AS A WITNESS AT THE BOARD HEARING IN THE CASE OF COOK, THE CASE MENTIONED ABOVE. PITOSCIA SAID HE TALKED A FEW FELLOWS INTO SIGNING CARDS. HE ALSO SAID HE MADE REMARKS ABOUT THE BENEFITS TO FOLLOW THE COMING IN OF A UNION WHERE THEY MIGHT HAVE BEEN OVERHEARD BY A SUPERVISOR. THE LATTER, HOWEVER, WAS NOT NAMED.

10. IT WAS THE SUBMISSION OF THE COMPLAINANT THAT HIS DEMOTION WAS DESIGNED BY THE COMPANY TO FORCE HIM TO RESIGN FROM THE COMPANY. THIS ACTION WAS SAID TO HAVE BEEN MOTIVATED BY THE COMPANY DESIRE TO GET RID OF PITOSCIA AS A KNOWN UNION SYMPATHIZER AT A TIME WHEN THE SIX MONTH BAR IMPOSED BY THE BOARD AGAINST THE NEW APPLICATION FOR CERTIFICATION FOLLOWING THE DISMISSAL OF APRIL 13, 1971 WAS ABOUT TO EXPIRE.

11. WITH RESPECT TO THE DEMOTION, THE COMPANY EVIDENCE IS THAT, FOLLOWING HIS APPOINTMENT AS AN ADVANCE SALESMAN IN OCTOBER 1970, PITOSCIA WAS CONSTANTLY AND LOUDLY CRITICAL OF THE NEW SYSTEM AND THAT NOTWITHSTANDING THE FACT THAT HE WON IN A SALES COMPETITION AND WAS THIRD IN ANOTHER, HIS OVERALL APPROACH TO THE JOB IN BOTH ATTITUDE AND, FINALLY, PROFICIENCY, LEFT MUCH TO BE DESIRED. THE CONTEST WHICH PITOSCIA WON WAS TO SEE WHICH SALESMAN COULD SHOW THE MOST INCREASE IN SALES OVER HIS PREVIOUS SALES. THE PLANT MANAGER TESTIFIED THAT HE HAD HEARD PITOSCIA TELLING A NUMBER OF DRIVERS THAT THE ADVANCE SALES SYSTEM

WAS NO DAMN GOOD AND THAT HE WAS MAKING LESS MONEY THAN HE USED TO UNDER THE OLD DRIVER SALESMEN SYSTEM. THE COMPANY EVIDENCE WAS THAT PITOSCIA HAD BEEN SPOKEN TO ON A NUMBER OF OCCASIONS WITH RESPECT TO HIS ATTITUDE TOWARD THE NEW SYSTEM AND THE NEGLECT OF HIS TERRITORY.

12. THE COMPANY STATED THAT IT MADE A SURVEY OF PITOSCIA'S TERRITORY AND FOUND HE WAS NOT OPENING NEW OUTLETS - WAS FAILING TO ROTATE STOCK AND NEGLECTING TO KEEP STOCK UP IN SEVERAL STORES. AS A RESULT OF THE SURVEY, PITOSCIA WAS INTERVIEWED ON AUGUST 6TH AND TOLD THAT THE COMPANY WAS DISSATISFIED WITH WHAT HE WAS DOING AS AN ADVANCE SALESMAN BUT THAT HE COULD GO BACK ON A DELIVERY TRUCK. HE ASKED FOR TIME TO THINK IT OVER AND LATER ON THAT DATE AGREED TO GO BACK TO THE TRUCKS.

13. PITOSCIA AGREED THAT HE HAD BEEN CRITICIZED FOR HIS ATTITUDE BUT NOT FOR HIS WORK PRIOR TO DEMOTION. THE COMPANY HAD CHANGED HIS ROUTE WITH THE RESULT THAT HIS NEW TERRITORY WAS NOT, HE FELT, AS GOOD AS THE FORMER. HE COMPLAINED ABOUT THIS TO THE COMPANY. HE SAID THAT MR. CAMPBELL, MANAGER OF OPERATIONS, TOLD HIM THAT HIS ATTITUDE WAS CHANGING AND ASKED HIM IF HE WOULD RATHER GO BACK ON THE TRUCKS. PITOSCIA SAID THAT HE WAS TOLD AT THAT TIME THAT DEMOTION MIGHT ENSUE UNLESS HIS ATTITUDE CHANGED. PITOSCIA ALSO TESTIFIED, HOWEVER, THAT HE HAD NEVER BEEN TOLD "INDIVIDUALLY" PRIOR TO AUGUST 6TH THAT HE WOULD BE DEMOTED. HE SAID THAT THE GROUP HAD BEEN WARNED THAT DEMOTION MIGHT ENSUE UNLESS ATTITUDES CHANGED. WHATEVER MAY BE THE REASON FOR HIS CONFUSION, THERE CAN BE NO DOUBT THAT PITOSCIA WAS AWARE OF THE POSSIBILITY OF DEMOTION PRIOR TO ITS OCCURRENCE.

14. PITOSCIA SAID THAT ON AUGUST 6TH HE WAS TOLD THAT THE COMPANY WAS NOT SATISFIED WITH HIS WORK. HE AGREED THAT MENTION WAS MADE BY THE COMPANY OF WHAT IT CONSIDERED TO BE HIS FAILURE TO OPEN NEW OUTLETS. HE DENIED THAT REFERENCE WAS MADE TO THE OTHER ITEMS MENTIONED IN THE RESPONDENT'S EVIDENCE. HE AGREED THAT THE COMPANY SUGGESTED HE GO BACK TO A DELIVERY ROUTE - THAT HE ASKED FOR TIME TO THINK IT OVER AND LATER AGREED TO TAKE A DRIVER SALESMAN'S ROUTE.

15. ACCORDING TO DOUGLAS TAYLOR, PLANT MANAGER, A SYSTEM OF SPOT CHECKING ON THE RECORDS USED BY THE DRIVER SALESMEN WAS INTRODUCED AT THE SAME TIME AS THE ADVANCE SALE SYSTEM WAS COMMENCED IN OCTOBER OF 1970. THERE WAS NO EVIDENCE AS TO WHAT, IF ANY, METHOD OF CHECKING ON THE RETURNS OF DRIVER SALESMEN WAS IN VOGUE TO THIS TIME SO THAT THE INCIDENCE OF ERROR OR FALSIFICATION THAT MAY HAVE BEEN PRESENT BEFORE THE INTRODUCTION OF THE SPOT CHECK IS NOT IN EVIDENCE. A GREAT DEAL OF EVIDENCE, ORAL AND DOCUMENTARY, WAS INTRODUCED WITH RESPECT TO THE SYSTEM UNDER WHICH DRIVER SALESMEN CARRY ON THEIR DUTIES. THE DOCUMENTS RECORDING THE DRIVERS' VARIOUS TRANSACTIONS FORM THE BASIS UPON WHICH THE SPOT CHECKS ARE MADE.

16. IT BECAME CLEAR AS THE EVIDENCE UNFOLDED THAT THE SYSTEM UNDER WHICH THE DRIVER SALESMEN WORKED LENT ITSELF TO THE COMMISSION OF ERRORS AND DISCREPANCIES. NOT ALL OF THE LATTER WERE DELIBERATE; SOME SIMPLY AROSE OUT OF THE INHERENT INEFFICIENCY OF THE METHOD ITSELF. THE EVIDENCE WAS THAT SPOT CHECKING WAS THE MOST FEASIBLE AND PRACTICAL METHOD OF CHECKING UPON DRIVERS. THIS CHECKING DOES NOT, OF COURSE, PREVENT THE OCCURRENCE OF THE INACCURACIES TO WHICH THE OVERALL SYSTEM APPEARS TO BE PRONE BUT IT DOES UNABLE THE COMPANY TO KEEP SOME CONTROL OVER EMPLOYEES' DISCREPANCIES WHETHER INNOCENT OR DELIBERATE. IT IS, OF COURSE, NOT A FOOL PROOF METHOD. THIS BECAME EVIDENT DURING THE HEARING WHEN RECORDS OF A WITNESS REQUESTED BY THE UNION REVEALED WHAT APPEARS TO BE A THEREFORE UNDISCLOSED IMPROPER TRANSACTION BY THE EMPLOYEE CONCERNED. THE INTERMITTANT NATURE OF THE CHECK MAY THEREFORE VERY WELL ENABLE A DISHONEST EMPLOYEE TO ESCAPE DETECTION AND A GREAT DEAL OF RELIANCE IS DOUBTLESS PLACE UPON THE DETERRENT EFFECT OF THE DISCIPLINE IMPOSED UPON THOSE WHO ARE CAUGHT.

17. ON AUGUST 16, 1971, A SPOT CHECK WAS MADE UPON PITOSCIA. IT INDICATED THAT ON THAT DATE HIS RECORDS CREDITED HIM WITH \$25.00 MORE FOR EMPTIES TURNED IN AT THE PLANT THAN HE HAD CREDITED TO THE CUSTOMERS. FOLLOWING THIS DISCOVERY, AN INVESTIGATION WAS MADE OF PITOSCIA'S ACCOUNTS FOR SEPTEMBER 7 AND 8, 1971. ON BOTH OF THESE DAYS THERE WAS A DISCREPANCY IN FAVOUR OF PITOSCIA ON BOTTLES RETURNED IN THE AMOUNT OF \$8.00 AND SOME CENTS IN EACH INSTANCE. HE WAS CALLED UPON TO ACCOUNT FOR THESE MATTERS. WITH RESPECT TO THE AUGUST 16TH EPISODE, PITOSCIA SAID THAT HE PURCHASED THIRTEEN CASES OF EMPTIES FROM A MAN ON THE STREET TO WHOM HE PAID \$6.00, \$7.00 OR \$8.00, HE WAS NOT SURE OF THE AMOUNT. HE ADVANCED THIS AS THE REASON FOR THE LACK OF CREDIT, TO THAT EXTENT, TO HIS CUSTOMERS.

18. THE RESPONDENT WAS NOT SATISFIED WITH THE ANSWERS GIVEN BY PITOSCIA WITH RESPECT TO ALL THOSE ACCOUNTS AND CONCLUDED THAT THE DISCREPANCIES, WHICH RESULTED IN A CREDIT TO HIS ACCOUNT TO THE DETRIMENT OF HIS CUSTOMERS, WERE DELIBERATE. IT APPEARS THAT EVEN IF CREDENCE WERE GIVEN TO THE EXPLANATION THAT PITOSCIA HAD PURCHASED THIRTEEN CASES OF EMPTIES ON THE STREET ON AUGUST 16, THERE IS STILL AN EXCESS AMOUNT IN HIS FAVOUR OF APPROXIMATELY \$15.00 FOR WHICH HE MADE NO EXPLANATION. HE WAS FIRST SUSPENDED AND THEN DISCHARGED. AS ALREADY OUTLINED, THE RESPONDENT STATES THAT THESE MATTERS CONSTITUTE THE SOLE REASON FOR DISCHARGING PITOSCIA AND THAT THIS QUESTION OF UNION ACTIVITY ON HIS PART DID NOT ENTER THE CONSIDERATIONS.

19. WITH INTENT TO SHOW THAT THE INSTANCES UPON WHICH THE DISCHARGE WAS BASED WERE NOT ISOLATED, THE RESPONDENT CONDUCTED A WIDER INVESTIGATION WHICH REVEALED FURTHER DISCREPANCIES IN THE COMPLAINANT'S ACCOUNT FAVOURABLE TO HIMSELF AND ADVERSE TO THE RESPONDENT'S

CUSTOMERS FOR WHICH HE WAS UNABLE TO PROVIDE THE RESPONDENT WITH A SATISFACTORY EXPLANATION.

20. AS WE HAVE NOTED, THE RESPONDENT CONCEDES THAT USE OF THE SYSTEM OF RECORDING TRANSACTIONS EMPLOYED WITH RESPECT TO DRIVER SALESMEN RESULTS IN FREQUENT DISCREPANCIES WHICH ARE ACCEPTED WHERE THE AMOUNT IS SMALL, OR WHERE A SATISFACTORY EXPLANATION IS MADE OR REPAYMENT IS MADE BY THE DRIVER. IT IS AN INDISPUTABLE FACT, HOWEVER, THAT THE RESPONDENT HAS DISCHARGED A NUMBER OF EMPLOYEES, BESIDES PITOSCIA, FOR DISCREPANCIES IN THEIR RECORDS FOR WHICH NO SATISFACTORY EXPLANATION HAS BEEN MADE OR WITH REGARD TO WHICH NO MONETARY ADJUSTMENT HAD BEEN MADE.

21. HAVING REGARD TO ALL OF THE EVIDENCE AND TO THE SUBMISSIONS OF COUNSEL, THE BOARD FINDS THAT THE COMPLAINANT HAS NOT ESTABLISHED THAT HE HAS BEEN DEALT WITH BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF THE LABOUR RELATIONS ACT.

22. THE COMPLAINT IS ACCORDINGLY DISMISSED.

DECISION OF BOARD MEMBER O. HODGES: MAY 31, 1972.

1. I DISSENT.

2. CONSIDERING ALL OF THE EVIDENCE, IT APPEARS TO ME THAT ANY EMPLOYEE OF THIS COMPANY WHO DEALS WITH ITS CUSTOMERS AND IS REQUIRED TO HANDLE CASH IN THE PROCESS, IS MORE THAN LIKELY TO BE A CANDIDATE FOR DISMISSAL ON THE SAME GROUND AS THE VICTIM PITOSCIA. IT WOULD BE NEARLY IMPOSSIBLE FOR THE EMPLOYEES TO ALWAYS BALANCE THEIR CASH UNDER THE SYSTEM EMPLOYED BY THE COMPANY. A "SPOT CHECK", SO CALLED, COULD BE ZEROED IN ON ANY SUCH EMPLOYEE AND INVARIABLY FIND EVIDENCE SUFFICIENT TO BUILD A CASE FOR DISMISSAL, ON THE GROUND OF A SHORTAGE IN RECEIPTS DUE THE COMPANY OR REFUNDS DUE A CUSTOMER.

3. EVERY EMPLOYEE IN THE CATEGORY OF ADVANCE SALESMAN OR DRIVER SALESMAN LIVES CONSTANTLY WITH 2 BUILT-IN DISMISSAL MECHANISM, I.E. THE DAILY COMPANY RECORD OF HIS HANDLING OF THE COMPANY CASH OR THE REFUNDS DUE THE CUSTOMER, PARTICULARLY IN RELATION TO THE RETURN AND CREDIT FOR EMPTIES. THE COMPANY HAS ALL OF THE ACES IN THIS DECK, AND REMEMBERING THE FRANK ADMISSION OF THE COMPANY THAT THEY WERE ANTI-UNION TO THE EXTENT PERMITTED UNDER THE ACT, THIS COMPANY HAS THE OBVIOUSLY ESSENTIAL MOTIVE AS WELL AS THE EVIDENCE TO EFFECT A DISMISSAL AGAINST ANY EMPLOYEE WHENEVER THEY MAY CHOOSE.

4. KNOWLEDGE OF UNION ACTIVITY BY THE EMPLOYER AT MATERIAL TIMES IS ESSENTIAL TO THE PROOF OF THE TYPE OF ALLEGATION MADE BY THE COMPLAINANT IN THIS CASE. THE DEGREE OF UNION ACTIVITY IS ALSO OF

GREAT SIGNIFICANCE. THE COMPLAINANT SHOULD BE AT PAINS TO ESTABLISH BOTH OF THESE MATTERS AS FULLY AS POSSIBLE. IN THE CIRCUMSTANCES OF THIS CASE, THE UNION MIGHT WELL HAVE BEEN WISE TO INFORM THE COMPANY AT THE BEGINNING OF ITS ORGANIZING CAMPAIGN OF THE NAMES OF THIS COMPANY'S EMPLOYEES WHO WERE TO HEAD UP THE UNION ACTIVITY.

5. IN ALL OF THE CIRCUMSTANCES IN THIS CASE AND CAREFULLY CONSIDERING ALL OF THE EVIDENCE ADDUCED, IT IS MY FINDING THAT THE COMPLAINANT ANTHONY PITOSCIA WAS DISCHARGED AS A RESULT OF HIS ACTIVITIES DIRECTED TOWARD THE ORGANIZATION OF THE UNION, AND NOT AS A RESULT, AS CLAIMED BY THE EMPLOYER. MY FINDING, THEREFORE, IS THAT THE COMPLAINANT PITOSCIA BE REINSTATED IN HIS POSITION AS ADVANCE SALESMAN, WITH FULL COMPENSATION FOR LOSS OF INCOME. I FURTHER FIND THAT SUCH REINSTATEMENT SHOULD BE MADE ON THE ROUTE TO WHICH THE COMPLAINANT WAS FIRST ASSIGNED AND WHICH HE DEVELOPED.

1191-71-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) v. BAY-SIDE INDUSTRIES LIMITED (RESPONDENT) v. MILLWRIGHTS' LOCAL 2309, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (INTERVENER).

BEFORE: R.A. FURNESS, VICE CHAIRMAN AND BOARD MEMBERS E. BOYER AND F.W. MURRAY.

APPEARANCES AT THE HEARING: EDWARD VANDERKLOET FOR THE APPLICANT; NO ONE APPEARING FOR THE RESPONDENT; A.E. GOLDEN, TED RYAN AND JOHN IRVINE APPEARING FOR THE INTERVENER.

DECISION OF THE BOARD: MAY 29, 1972.

1. THIS APPLICATION FOR CERTIFICATION WAS FILED ON OCTOBER 29, 1971.

2. AT THE TIME WHEN THIS APPLICATION FOR CERTIFICATION WAS FILED THE INTERVENER WAS NOT NOTIFIED OF SUCH APPLICATION BECAUSE NEITHER THE APPLICANT NOR THE BOARD WAS AWARE THAT THE INTERVENER HAD ANY INTEREST IN THIS PROCEEDING. SIMILARLY, THE RESPONDENT, WHICH DID NOT FILE A REPLY IN THIS MATTER, DID NOT NOTIFY THE BOARD THAT THE INTERVENER CLAIMED TO REPRESENT EMPLOYEES OF THE RESPONDENT.

3. ON NOVEMBER 10 AND DECEMBER 9, 1971, THE BOARD APPOINTED AN EXAMINER TO INQUIRE INTO CERTAIN ASPECTS OF THIS APPLICATION. THE EVIDENCE OBTAINED BY THE EXAMINER IN THIS MATTER WAS ADDUCED AT TIMES WHEN THE INTERVENER WAS NOT A PARTY TO THIS PROCEEDING. SUBSEQUENT TO THE SECOND APPOINTMENT OF THE EXAMINER, THE BOARD RECEIVED A LETTER FROM MILLWRIGHTS LOCAL 2309, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (HEREINAFTER REFERRED TO AS "LOCAL 2309"). IN THIS LETTER

LOCAL 2309 INFORMED THE BOARD THAT IT HAD BECOME AWARE OF THIS APPLICATION FOR CERTIFICATION FILED BY THE APPLICANT AND THAT IT WISHED TO INTERVENE IN THIS APPLICATION BECAUSE THE RESPONDENT WAS A SIGNATORY TO A COLLECTIVE AGREEMENT WITH LOCAL 2309 SINCE NOVEMBER 24, 1969.

4. THE BOARD LISTED THIS MATTER FOR HEARING FOR THE PURPOSE OF ENTERTAINING THE REPRESENTATIONS OF THE PARTIES IN CONNECTION WITH THIS APPLICATION FOR CERTIFICATION.

5. AT THE HEARING IN THIS MATTER THE APPLICANT INFORMED THE BOARD THAT IT HAD HAD AN OPPORTUNITY TO EXAMINE THE ALLEGED COLLECTIVE AGREEMENT REFERRED TO BY LOCAL 2309 AND AGREED THAT LOCAL 2309 IN FACT HAD BARGAINING RIGHTS WITH RESPECT TO THE EMPLOYEES AFFECTED BY THIS APPLICATION. HOWEVER, IT WAS THE CONTENTION OF THE APPLICANT THAT, NOTWITHSTANDING THE ADMITTED BARGAINING RIGHTS OF LOCAL 2309, THIS APPLICATION FOR CERTIFICATION WAS TIMELY.

6. TWO COLLECTIVE AGREEMENTS WERE PRODUCED BEFORE THE BOARD. THE FIRST COLLECTIVE AGREEMENT IS BETWEEN THE ASSOCIATION OF MILL-WRIGHTING CONTRACTORS OF ONTARIO AND THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA ON BEHALF OF ITS LOCAL UNIONS AND DISTRICT COUNCILS IN THE PROVINCE OF ONTARIO. THIS COLLECTIVE AGREEMENT BECAME EFFECTIVE ON AUGUST 12, 1971 AND REMAINS IN EFFECT UP TO AND INCLUDING MAY 31, 1973. THIS COLLECTIVE AGREEMENT IS APPLICABLE TO AND EFFECTIVE WITHIN THE PROVINCE OF ONTARIO. THE SECOND COLLECTIVE AGREEMENT WAS ENTERED INTO ON NOVEMBER 24, 1969 AND IS BETWEEN BAYSIDE MFG. INDUSTRIES LIMITED AND THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA ON BEHALF OF ITS LOCAL UNIONS AND DISTRICT COUNCILS IN THE PROVINCE OF ONTARIO. THIS AGREEMENT APPLIES TO AND IS EFFECTIVE WITHIN THE PROVINCE OF ONTARIO. ARTICLE 2 OF THE LATTER COLLECTIVE AGREEMENT INCORPORATES BY REFERENCE THE FIRST COLLECTIVE AGREEMENT REFERRED TO EARLIER.

7. BY ARTICLE 9 OF THE SECOND COLLECTIVE AGREEMENT IT IS TO REMAIN IN FULL FORCE AND EFFECT FOR A PERIOD OF ONE YEAR FROM THE DATE UPON WHICH IT WAS ENTERED INTO AND SHALL CONTINUE IN FULL FORCE FROM YEAR TO YEAR THEREAFTER SUBJECT TO NOTICE. IT WAS NOT ALLEGED BEFORE THE BOARD THAT THE SECOND COLLECTIVE AGREEMENT HAD NOT BEEN CONTINUED IN FULL FORCE AND EFFECT AT THE TIME THIS APPLICATION WAS MADE. ARTICLE 5 OF THE SECOND COLLECTIVE AGREEMENT PROVIDES THAT WHERE THERE IS A CONFLICT OR DUPLICATION BETWEEN THE PROVISIONS OF THE SECOND COLLECTIVE AGREEMENT AND THE FIRST COLLECTIVE AGREEMENT THEN THE PROVISIONS OF THE SECOND COLLECTIVE AGREEMENT SHALL SUPERCEDE AND PREVAIL.

8. ACCORDINGLY, ON THE BASIS OF THE EVIDENCE BEFORE THE BOARD AND THE REPRESENTATIONS OF THE PARTIES, THE BOARD FINDS THAT THIS APPLICATION FOR CERTIFICATION IS TIMELY SINCE IT WAS MADE DURING THE

LAST TWO MONTHS OF THE COLLECTIVE AGREEMENT TO WHICH THE RESPONDENT AND THE INTERVENER ARE PARTIES.

9. THERE REMAINS HOWEVER A NUMBER OF ISSUES WHICH ARE OUTSTANDING IN THIS APPLICATION WHICH MAY BE RESOLVED BY THE APPOINTMENT OF AN EXAMINER. THE BOARD NOTES THAT THE EARLIER APPOINTMENTS OF THE EXAMINER WERE MADE AT A TIME WHEN LOCAL 2309 WAS NOT A PARTY TO THIS PROCEEDING BEFORE THE BOARD. ACCORDINGLY, THE APPOINTMENT OF MR. J.R. HENDERSON, EXAMINER, DATED DECEMBER 9, 1971 IS HEREBY REVOKED.

10. MR. C.F. ROBICHEAU, EXAMINER, IS AUTHORIZED TO INQUIRE INTO AND REPORT TO THE BOARD ON:

- A) THE CORRECT NAME OF THE RESPONDENT;
- B) THE NUMBER OF MILLWRIGHTS IN THE EMPLOY OF THE RESPONDENT ON THE DATE OF THE MAKING OF THIS APPLICATION THROUGHOUT THE PROVINCE OF ONTARIO AND THE LOCATION OF THE JOBS ON WHICH THEY WERE WORKING ON THAT DATE;
- C) THE NATURE OF THE RESPONDENT'S BUSINESS OPERATIONS.

(SEE PAGE 488 BEFORE #854-71-M).

THIS IS THE SECOND CASE IN THE CONSTRUCTION INDUSTRY, (SEE INDUSTRIAL MINES INSTALLATION LIMITED OLRB. MONTHLY REPORT MAY 1968, P. 217) WHERE THE BOARD HAS ORDERED A REPRESENTATION VOTE BECAUSE OF BUILD-UP. WHILE I AGREE THERE WAS ANOTHER FACTOR IN THAT CASE, WHICH THE MAJORITY CONSIDERED, IT DOES NOT ALTER MY DISSENT AND IN THE PRESENT CASE I MUST AGAIN DISSENT BECAUSE THE QUESTION OF BUILD UP IN THE CONSTRUCTION INDUSTRY IS VERY UNFAIR TO EMPLOYEES BY DENYING THEM COLLECTIVE BARGAINING OVER A PERIOD OF TIME WHILE A VOTE IS CONDUCTED WHICH MAY EXTEND FOR SOME CONSIDERABLE TIME.

2. I DO NOT INTEND TO REPEAT ALL THAT I WROTE IN THE INDUSTRIAL MINES INSTALLATION LIMITED CASE, SUPRA, BUT I DO AGAIN WANT TO EMPHASIZE PARAGRAPH THREE OF SAID DISSENT REGARDING THE ROYAL COMMISSION ON LABOUR MANAGEMENT IN THE CONSTRUCTION INDUSTRY (GOLDENBERG REPORT) ISSUED IN 1962.

"THE BARGAINING UNIT ENVISAGED BY THE ACT IS
A GROUP OF REGULARLY EMPLOYED PERSONS
ENGAGED BY A SINGLE EMPLOYER AND WORKING AT

A PARTICULAR LOCATION THROUGHOUT THE YEAR. CONSTRUCTION EMPLOYMENT DOES NOT FIT THIS PIRCUTE. IT HAS NO STABILITY. THE WORKER MOVES FROM JOB TO JOB AND FROM EMPLOYER TO EMPLOYER. THE DURATION OF HIS EMPLOYMENT MAY RANGE FROM A FEW DAYS TO A NUMBER OF MONTHS, DEPENDING UPON THE SIZE OF THE PROJECT. THE CLASS OF CRAFTSMEN AND THE NUMBER EMPLOYED IN ANY PARTICULAR CRAFT WILL RISE AND FALL AS THE JOB PROGRESSES. THERE IS RARELY ANY PERIOD OF TIME DURING WHICH THE NUMBER OF EMPLOYEES IN SOME OF THE CRAFTS ON A CONSTRUCTION PROJECT CAN BE SAID TO CONSTITUTE A "NORMAL WORK FORCE", IN THE SENSE IN WHICH THAT TERM IS USED IN MANUFACTURING."

PARTICULAR NOTE MUST BE GIVEN TO THE LAST SENTENCE WHICH REFERS TO A "NORMAL WORK FORCE" IN CONSTRUCTION AS OPPOSED TO MANUFACTURING.

3. FIRST, LET US LOOK AT THE FACTS OF THE CASE UP TO THE PRESENT DATE.

APRIL 12, 1972	-	DATE OF APPLICATION
APRIL 13, 1972	-	APPLICATION RECEIVED BY BOARD ALONG WITH 4 CERTIFICATES OF MEMBERSHIP
APRIL 19, 1972	-	BOARD RECEIVED 6 ADDITIONAL CERTIFICATES OF MEMBERSHIP ALONG WITH FORM 54, DECLARATION CONCERNING MEMBERSHIP DOCUMENTS, CONSTRUCTION INDUSTRY.
APRIL 24, 1972	-	TERMINAL DATE

IT IS WORTH NOTING THAT THE EVIDENCE OF MEMBERSHIP FILED BY THE APPLICANT CONSISTED OF CERTIFICATES OF MEMBERSHIP FOR PERSONS WHO WERE ALREADY MEMBERS IN GOOD STANDING OF THE APPLICANT RATHER THAN APPLICATIONS FOR MEMBERSHIP BY PERSONS WHO HAD RECENTLY APPLIED TO JOIN THE APPLICANT.

APRIL 24, 1972	-	REPLY FROM RESPONDENT RECEIVED BY BOARD ASKING FOR HEARING ON BUILD-UP.
APRIL 25, 1972	-	BOARD ORDERED HEARING FOR SAME

MAY 12, 1972 - HEARING HELD

MAY 18, 1972 - BOARD ORDERS A REPRESENTATION
VOTE.

4. WHILE THE BOARD TAKES ONLY THE DATE OF MAKING THE APPLICATION FOR THE PURPOSES OF THE COUNT, ONE CAN ASSUME THAT THE OTHER SIX CERTIFICATES OF MEMBERSHIP WERE FOR EMPLOYEES IN THE BARGAINING UNIT SOUGHT BY THE APPLICANT. ONE CAN SEE FROM THAT THE DATE OF MAKING THE APPLICATION TO THE DATE OF ORDERING THE VOTE, 36 DAYS ALREADY HAVE ELAPSED. IT MUST BE REMEMBERED THAT THE RESPONDENT IS A CONSTRUCTION FIRM WHICH IS NOT A RESIDENT IN THE AREA BUT IS FROM ANOTHER PROVINCE AND HAS A PROJECT THAT WILL LAST ABOUT A YEAR AND THAT ITS LIKELIHOOD OF CONTINUING IN THE AREA IS REMOTE.

5. FOLLOWING THE ORDERING OF THE REPRESENTATION VOTE, THE BOARD DIRECTS THE PARTIES TO MEET TO SET UP THE VOTERS' LIST, THE DATE OF THE VOTE, ETC. WHILE THE FOLLOWING IS A PROJECTION LOOKING AT NORMAL PROCEDURE, ONE CAN CONTEMPLATE A FURTHER TIME LAPSE. THE EARLIEST DATE A VOTE COULD BE HELD WOULD BE AROUND JUNE 9, 1972, AND ALLOWING THE REQUIRED TIME FOR ANY OBJECTIONS TO THE VOTE, CHALLENGES, ETC., THE EARLIEST DATE A CERTIFICATE COULD BE ISSUED WOULD BE AROUND JUNE 15TH TO THE 20TH. UPON THE RECEIPT OF A CERTIFICATE AND ALLOWING THAT PROPER NOTICE HAS TO BE GIVEN TO COMMENCE BARGAINING FOR A COLLECTIVE AGREEMENT, THE EARLIEST DATE COLLECTIVE BARGAINING CAN START IS THE FIRST WEEK IN JULY 1972, APPROXIMATELY 80 TO 85 DAYS SINCE THE DATE OF THE MAKING OF THE APPLICATION. IT MUST BE EMPHASIZED THAT THE ANTICIPATED COMPLETION OF THE PROJECT IS THE END OF APRIL OR EARLY MAY, 1973.

6. ACCORDING TO THE INFORMATION GIVEN TO THE BOARD AND A CHART SUBMITTED BY THE RESPONDENT ON APRIL 21, 1972, THE DATE OF THE MAKING OF THE APPLICATION, THERE WERE FOUR EMPLOYEES IN THE BARGAINING UNIT AND ON OCTOBER 14, 1972 THERE WILL BE ONLY 4 EMPLOYEES IN THE BARGAINING UNIT AND THIS FIGURE MAY FLUCTUATE BY 1 OR 2 FOR THE BALANCE OF THE PROJECT (BASED ON THE FIGURES SUPPLIED IN THE CHART).

ACCORDING TO THE CHART SUBMITTED WE FIND THE FOLLOWING -
(NOTE, RESPONDENT SAID THE PROJECT WAS ONE WEEK BEHIND SCHEDULE BUT THAT THIS WOULD BE PICKED UP AS THE PROJECT PROCEEDED). THE FOLLOWING IS THE NUMBER OF EMPLOYEES IN THE BARGAINING UNIT REQUIRED FOR EACH WEEK ACCORDING TO THE CHART:

APRIL 22	32.9	APRIL 29	47.4
MAY 6	75.5	MAY 13	92.0
MAY 20	105.8	MAY 27	109.00

JUNE 3	103.2	JUNE 10	112.3
JUNE 17	110.1	JUNE 24	107.0
JULY 1	102.2	(FROM THEN ON THE WORK FORCE DECLINES).	
JULY 8	94.7	JULY 15	90.0
JULY 22	88.3	JULY 29	88.0
AUG. 5	55.2	AUG. 12	56.4
AUG. 19	51.3	AUG. 26	51.3
SEPT. 2	57.6	SEPT. 9	40.5
SEPT. 16	40.5	SEPT. 30	21.4
SEPT. 23	21.4	OCT. 7	4.2
OCT. 14	4.2		

7. THIS COMES TO A TOTAL OF 1,763.3 OR 70,532 MAN HOURS OF WORK TO BE DONE BY EMPLOYEES IN THE BARGAINING UNIT. AS POINTED OUT ABOVE, THE EARLIEST DATE THE APPLICANT COULD BE IN A POSITION TO COMMENCE NEGOTIATIONS FOR A COLLECTIVE AGREEMENT WOULD BE JULY 1, 1972, (WITH A TOTAL OF 39,896 MAN HOURS OF WORK COMPLETED). WHILE IT MAY BE ARGUED THAT THE APPLICANT OBTAINS BARGAINING RIGHTS FOR A PARTICULAR AREA SET OUT BY THE BOARD, IN THE INSTANT APPLICATION, AS POINTED OUT ABOVE, THE RESPONDENT IS A FIRM COMMONLY KNOWN IN THE INDUSTRY AS AN OUTSIDE CONTRACTOR AS OPPOSED TO A RESIDENT CONTRACTOR. ONCE THE JOB IS COMPLETED, IT MOVES OUT AND THE CHANCE FOR CONTINUING EMPLOYMENT WITH THE RESPONDENT IS VERY REMOTE, SO THAT WHAT YOU REALLY HAVE IS A HALF A PROJECT CERTIFICATION WHICH IS FIFTY PER CENT COMPLETED BEFORE THE EMPLOYEES IN THE BARGAINING UNIT CAN REAP THE BENEFIT OF COLLECTIVE BARGAINING. THIS IS A CLEAR INDICATION OF THE RAPING OF THE RIGHT TO COLLECTIVE BARGAINING IN THE CONSTRUCTION INDUSTRY.

8. IT IS FOR THESE REASONS I STRONGLY DISSENT AND IT IS WHAT THE COMMISSIONER MEANT WHEN HE MADE THE RECOMMENDATIONS:

"I RECOMMEND THAT IN CONSTRUCTION CASES THE BOARD SHOULD NOT WAIT UNTIL A REPRESENTATIVE GROUP OF EMPLOYEES IS AT WORK BUT SHOULD ISSUE AN AREA CERTIFICATE UPON THE UNION ESTABLISHING THAT IT HAS

THE REQUISITE NUMBER OF MEMBERS AMONG
THE EMPLOYEES IN THE UNIT AT THE TIME
WHEN THE APPLICATION IS MADE...."

IN MY VIEW THE RESPONDENT IS ONLY USING THE QUESTION OF
BUILD UP AS A TACTIC TO DELAY COLLECTIVE BARGAINING AND THE APPLICANT
SHOULD HAVE BEEN CERTIFIED ON APRIL 25, 1972 IN ACCORDANCE WITH THE
BOARD'S NORMAL PRACTICE.

CASE LISTINGS MAY 1972

	PAGE
1. CERTIFICATION	
(A) BARGAINING AGENTS CERTIFIED	105
(B) APPLICATIONS DISMISSED	119
(C) APPLICATIONS WITHDRAWN	126
2. APPLICATION FOR DECLARATION TERMINATING BARGAINING RIGHTS	127
3. APPLICATIONS FOR DECLARATION THAT STRIKE UNLAWFUL	127
4. APPLICATIONS FOR CONSENT TO PROSECUTE	128
5. COMPLAINTS UNDER SECTION 79 (FORMERLY S. 65) (UNFAIR LABOUR PRACTICE)	129
6. APPLICATION UNDER SECTION 37(3) (FORMERLY S. 34(3))	132
7. APPLICATIONS UNDER SECTION 39 (FORMERLY S.35(A))	132
8. APPLICATION FOR CONSENT TO EARLY TERMINATION OF COLLECTIVE AGREEMENT	132
9. APPLICATIONS UNDER SECTION 55 (FORMERLY S. 47A)	132
10. APPLICATION UNDER SECTION 73(2) (FORMERLY S. 60(2) (CONTINUATION OF LOCALS UNDER TRUSTEESHIP	133
11. JURISDICTIONAL DISPUTES	133
12. APPLICATIONS FOR DETERMINATION UNDER SECTION 95(2) (FORMERLY S. 79(2))	134
13. REFERENCES TO BOARD PURSUANT TO SECTION 96 (FORMERLY S. 79A)	134
14. APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION	134

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

DURING MAY 1972

BARGAINING AGENTS CERTIFIED DURING MAY

NO VOTE CONDUCTED

522-71-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) v. PERF CONSTRUCTION COMPANY (RESPONDENT) v. OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, LOCAL UNION #172 (INTERVENER).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN AND CONSTRUCTION LABOURERS ENGAGED IN BUILDING PROJECTS." (2 EMPLOYEES IN THE UNIT).

1240-71-R: INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION 586 (APPLICANT) v. DONALD SERVANT ELECTRIC LIMITED (RESPONDENT).

UNIT: "ALL ELECTRICIANS AND ELECTRICIANS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (7 EMPLOYEES IN THE UNIT). (7 EMPLOYEES IN THE UNIT).

(SEE DECISION [1972] OLRB REP. 409).

1715-71-R: INTERNATIONAL BROTHERHOOD OF PULP, SULPHITE AND PAPER MILL WORKERS (APPLICANT) v. CHAMPLAIN FOREST PRODUCTS LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT NORTH BAY, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (30 EMPLOYEES IN THE UNIT).

(SEE DECISION [1972] OLRB REP. 399).

1750-71-R: INTERNATIONAL UNION, UNITED PLANT GUARD WORKERS OF AMERICA, LOCAL 1962 (APPLICANT) v. WELLS FARGO ARMoured EXPRESS, LTD. (RESPONDENT) v. TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL 91 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (INTERVENER).

UNIT: "ALL SECURITY GUARDS EMPLOYED BY THE RESPONDENT AT OTTAWA, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE AND SALES STAFF." (8 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE SUBMISSIONS OF THE PARTIES).

(SEE DECISION [1972] OLRB REP. 417).

1769-71-R: CHATHAM CONSTRUCTION WORKERS ASSOCIATION, LOCAL NO. 53, AFFILIATED WITH THE CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. ABE DEJONGE CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS, CARPENTERS APPRENTICES, CONSTRUCTION LABOURERS, PLUMBERS AND PLUMBERS APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF ESSEX AND KENT AND ALL EMPLOYEES ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, EMPLOYED BY THE RESPONDENT IN THE COUNTIES OF ESSEX AND KENT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (8 EMPLOYEES IN THE UNIT).

1790-71-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. CYRIL B. SMITH ELECTRIC LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE TOWN OF LINCOLN, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND EMPLOYEES COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL #303." (2 EMPLOYEES IN THE UNIT).

1803-71-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. K. M. W. PRODUCTS LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT FORT ERIE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (26 EMPLOYEES IN THE UNIT). (FOR PURPOSES OF CLARITY THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT DRAFTSMEN ARE PART OF THE OFFICE STAFF AND ARE NOT INCLUDED IN THE BARGAINING UNIT.).

(SEE DECISION [1972] OLRB REP. 406).

1825-72-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (APPLICANT) V. SIROX PLASTERING LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT ENGAGED IN BUILDING PROJECTS IN METROPOLITAN TORONTO, THE REGIONAL MUNIC-

IPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (18 EMPLOYEES IN THE UNIT).

1833-72-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (APPLICANT) V. ROGERS PLASTERING & LATHING CONTRACTORS LTD. (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT ENGAGED IN BUILDING PROJECTS IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (9 EMPLOYEES IN THE UNIT).

1834-72-R: LOCAL 206, NATIONAL COUNCIL OF CANADIAN LABOUR (APPLICANT) V. SUNNYBROOK FOOD MARKET (KEELE) LIMITED (RESPONDENT) V. RETAIL CLERKS INTERNATIONAL ASSOCIATION (INTERVENER).

UNIT #1: "ALL EMPLOYEES OF THE RESPONDENT AT ITS STORES IN WHITBY, SAVE AND EXCEPT DEPARTMENT MANAGERS, HEAD OFFICE AND WAREHOUSE STAFF AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND LOCAL 206, NATIONAL COUNCIL OF CANADIAN LABOUR, EFFECTIVE THE 1ST DAY OF JANUARY 1971, HEREINAFTER REFERRED TO AS BARGAINING UNIT #1." (21 EMPLOYEES IN THE UNIT).

UNIT #2: "ALL EMPLOYEES OF THE RESPONDENT AT ITS STORES IN PICKERING TOWNSHIP, SAVE AND EXCEPT DEPARTMENT MANAGERS, HEAD OFFICE AND WAREHOUSE STAFF AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND LOCAL 206, NATIONAL COUNCIL OF CANADIAN LABOUR, EFFECTIVE THE 1ST DAY OF JANUARY 1971, HEREINAFTER REFERRED TO AS BARGAINING UNIT #2." (23 EMPLOYEES IN THE UNIT).

UNIT #3: "ALL EMPLOYEES OF THE RESPONDENT AT ITS STORES IN PETERBOROUGH, SAVE AND EXCEPT DEPARTMENT MANAGERS, HEAD OFFICE AND WAREHOUSE STAFF AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND LOCAL 206, NATIONAL COUNCIL OF CANADIAN LABOUR, EFFECTIVE THE 1ST DAY OF JANUARY 1971, HEREINAFTER REFERRED TO AS BARGAINING UNIT #3." (59 EMPLOYEES IN THE UNIT).

UNIT #4: "ALL EMPLOYEES OF THE RESPONDENT AT ITS STORES IN OSHAWA, SAVE AND EXCEPT DEPARTMENT MANAGERS, HEAD OFFICE AND WAREHOUSE STAFF AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND LOCAL 206, NATIONAL COUNCIL OF CANADIAN LABOUR, EFFECTIVE THE 1ST DAY OF JANUARY 1971, HEREINAFTER REFERRED TO AS BARGAINING UNIT #4." (29 EMPLOYEES IN THE UNIT).

UNIT #5: "ALL EMPLOYEES OF THE RESPONDENT AT ITS STORES IN METROPOLITAN TORONTO, SAVE AND EXCEPT DEPARTMENT MANAGERS, HEAD OFFICE AND WAREHOUSE STAFF AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND LOCAL 206, NATIONAL COUNCIL OF CANADIAN LABOUR, EFFECTIVE THE 1ST DAY OF JANUARY 1971, HEREINAFTER REFERRED TO AS BARGAINING UNIT #5." (32 EMPLOYEES IN THE UNIT).

1839-72-R: SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 532, AFFILIATED WITH THE S.E.I.U., AFL, CIO, CLC (APPLICANT) V. UNITED MEDICENTER OF CANADA LTD. (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT HAMTILON, SAVE AND EXCEPT PROFESSIONAL NURSING STAFF, PHYSIOTHERAPISTS, OCCUPATIONAL THERAPISTS, SUPERVISORS, FOREMEN, PERSONS ABOVE THE RANK OF SUPERVISOR AND FOREMAN, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (72 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES.).

1840-72-R: INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS (APPLICANT) V. VULCAN MACHINERY AND EQUIPMENT LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT THUNDER BAY, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE, SALES STAFF AND JANITORS AND PERSONS COVERED BY SUBSISTING COLLECTIVE AGREEMENTS." (13 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

1843-72-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) V. A. M. MAINTENANCE (RESPONDENT) V. CARPENTERS' DISTRICT COUNCIL OF TORONTO AND VICINITY, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (INTERVENER).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

1847-72-R: THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. JABO HOLDINGS LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF OXFORD, PERTH, HURON, MIDDLESEX, BRUCE AND ELGIN, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE

RANK OF NON-WORKING FOREMAN." (15 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE REPRESENTATIONS OF THE PARTIES). (FOR THE PURPOSES OF CLARITY, THE BOARD DECLARED THAT CARPENTERS AND CARPENTERS' APPRENTICES ENGAGED IN MAINTENANCE WORK ARE NOT INCLUDED IN THE ABOVE DEFINED BARGAINING UNIT.).

1852-72-R: GENERAL TRUCK DRIVERS' UNION LOCAL 938 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. KEYES SUPPLY CO. LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT SUDBURY, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR (24) HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (32 EMPLOYEES IN THE UNIT).

1856-72-R: SERVICE EMPLOYEES UNION, LOCAL 210, AFFILIATED WITH SERVICE EMPLOYEES INTERNATIONAL UNION, A.F.L.-C.I.O.-C.L.C. (APPLICANT) V. THE CORPORATION OF THE COUNTY OF KENT (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT THAMESVIEW LODGE, KENT COUNTY HOME FOR THE AGED AT CHATHAM, SAVE AND EXCEPT PROFESSIONAL MEDICAL STAFF, REGISTERED NURSES, GRADUATE PHARMACISTS, GRADUATE DIETITIANS, UNDERGRADUATE DIETITIANS, SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE STAFF AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT." (16 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE SUBMISSIONS OF THE PARTIES).

1859-72-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT) V. SILVERWOOD INDUSTRIES, LIMITED (RESPONDENT).

UNIT: "ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT IN ITS SILVERWOOD DAIRIES DIVISION AT ST. CATHARINES, SAVE AND EXCEPT ACCOUNTANT, PERSONS ABOVE THE RANK OF ACCOUNTANT, SALES STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (10 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE SUBMISSIONS OF THE PARTIES).

1867-72-R: LUMBER AND SAWMILL WORKERS' UNION, LOCAL 2995 OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. FELDMAN TIMBER COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS SAWMILL AND PLANING MILL AT THE TOWNSHIP OF MOUNTJOY, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (59 EMPLOYEES IN THE UNIT).

1868-72-R: INTERNATIONAL BROTHERHOOD OF PAINTERS AND ALLIED TRADES, LOCAL UNION 114 (APPLICANT) V. RIDEAU GLASS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS WAREHOUSE IN KINGSTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE AND SALES STAFF." (5 EMPLOYEES IN THE UNIT).

1878-72-R: HOTEL AND CLUB EMPLOYEES' UNION, LOCAL 299, TORONTO, ONTARIO, OF THE HOTEL AND RESTAURANT EMPLOYEES' AND BARTENDERS' INTERNATIONAL UNION, (A.F.L.-C.I.O.-C.L.C.) (APPLICANT) V. SHORNCIFFE MOTOR HOTEL LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT ASSISTANT MANAGERS, DEPARTMENT HEADS, SUPERVISORS, PERSONS ABOVE THE RANK OF ASSISTANT MANAGER, DEPARTMENT HEAD AND SUPERVISOR, AUDIT AND OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (75 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES). (FOR THE PURPOSES OF CLARITY THE BOARD NOTED THE FURTHER AGREEMENT OF THE PARTIES THAT THE TERM "OFFICE STAFF" INCLUDES FRONT DESK CLERKS AND THAT THEY ARE THEREFORE EXCLUDED FROM THE BARGAINING UNIT BUT DOES NOT INCLUDE TELEPHONE OPERATORS WHO ARE THEREFORE INCLUDED IN THE BARGAINING UNIT.).

1879-72-R: INTERNATIONAL UNION, UNITED PLANT GUARD WORKERS OF AMERICA LOCAL 1962 (APPLICANT) V. ALCAN CANADA PRODUCTS, A DIVISION OF ALUMINUM COMPANY OF CANADA, LTD., KINGSTON WORKS (RESPONDENT).

UNIT: "ALL SECURITY GUARDS IN THE EMPLOY OF THE RESPONDENT AT ITS KINGSTON WORKS SAVE AND EXCEPT SERGEANTS AND PERSONS ABOVE THE RANK OF SERGEANT." (13 EMPLOYEES IN THE UNIT).

1882-72-R: TEAMSTERS LOCAL UNION No. 879, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. CANADIAN FERRO HOT TOPS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT STONEY CREEK, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE STAFF." (19 EMPLOYEES IN THE UNIT).

1884-72-R: OFFICE AND PROFESSIONAL EMPLOYEES INTERNATIONAL UNION LOCAL 343 (APPLICANT) V. ONTARIO FEDERATION OF LABOUR, C.L.C. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT SECRETARY-TREASURER AND PERSONS ABOVE THE RANK OF SECRETARY-TREASURER, AND PERSONS COVERED BY THE SUBSISTING COLLECTIVE AGREEMENT

BETWEEN THE APPLICANT AND THE RESPONDENT EFFECTIVE FROM OCTOBER 1, 1970 TO SEPTEMBER 30, 1972." (4 EMPLOYEES IN THE UNIT).

1887-72-R: SMITH BEVERAGES EMPLOYEES ASSOCIATION (APPLICANT) V. SMITH BEVERAGES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT OSHAWA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (18 EMPLOYEES IN THE UNIT).

1888-72-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 1747 (APPLICANT) V. J. MCBRIDE & SONS LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO ENGAGED IN CAULKING, WEATHER STRIPPING AND SEALING, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (20 EMPLOYEES IN THE UNIT).

1889-72-R: CHRISTIAN TRADE UNIONS OF CANADA (LOCAL 6) (APPLICANT) V. DEMIK CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS, CARPENTERS' APPRENTICES AND CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF BRANT AND NORFOLK, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

1891-72-R: LUMBER AND SAWMILL WORKERS UNION, LOCAL 2995 OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. RUDOLPH MCCHESENEY LUMBER COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS SAWMILL AND PLANING MILL AT TIMMINS, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, SALES STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (55 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES.). (FOR THE PURPOSE OF CLARITY, THE BOARD NOTED THE AGREEMENT OF THE PARTIES TO THE EFFECT THAT EMPLOYEES ENGAGED IN THE WHOLESALE AND RETAIL OPERATIONS OF THE RESPONDENT AND EMPLOYEES ENGAGED IN ITS WOODS OPERATIONS, ARE NOT INCLUDED IN THE BARGAINING UNIT.).

1900-72-R: THE CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE CORPORATION OF THE TOWNSHIP OF BLACK RIVER-MATHESON (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT MATHESON, SAVE AND EXCEPT SUPERINTENDENT, PERSONS ABOVE THE RANK OF SUPERINTENDENT AND PERSONS COVERED BY A CERTIFICATE ISSUED BY THE BOARD PURSUANT TO ITS DECISION DATED JANUARY 18, 1972." (9 EMPLOYEES IN THE UNIT).

1908-72-R: UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL 599 (APPLICANT) V. LOU BRISTOW PLUMBING AND HEATING (RESPONDENT).

UNIT: "ALL PLUMBERS AND PLUMBERS' APPRENTICES, STEAMFITTERS AND STEAM-FITTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF SIMCOE, THE DISTRICT OF MUSKOKA AND THE TOWNSHIPS OF RAMA, MARA AND THORAH IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

1911-72-R: INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, AFL-CIO-CLC (APPLICANT) V. GENERAL SPRING COMPANY LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT THE TOWN OF PRESCOTT, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE STAFF." (31 EMPLOYEES IN THE UNIT).

1915-72-R: LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL UNION No. 597 (APPLICANT) V. DIVISION CONST. LTD. (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF ONTARIO (EXCEPT THE TOWNSHIPS OF PICKERING, RAMA, MARA AND THORAH) AND THE COUNTY OF DURHAM (EXCEPT THE TOWNSHIP OF HOPE), SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

1916-72-R: AMALGAMATED SILVER, JEWELRY AND ALLIED WORKERS UNION LOCAL ~~44~~ INTERNATIONAL JEWELRY WORKERS UNION (APPLICANT) V. THE QUAKER OATS COMPANY OF CANADA LIMITED (RESPONDENT) V. EMPLOYEE (OBJECTOR).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS FROZEN FOOD PLANT AT TRENTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (58 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

1919-72-R: BRICKLAYERS, STONEMASONS & TILESETTERS UNION, LOCAL No. 2 ONTARIO (APPLICANT) V. JOHN'S BRICK AND BLOCK WORKS LTD. (RESPONDENT).

UNIT: "ALL BRICKLAYERS AND BRICKLAYERS' APPRENTICES, STONEMASONS AND STONEMASONS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN METROPO-

LITAN TORONTO, THE REGIONAL MUNICIPALITY OF YORK AND THE COUNTY OF PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (10 EMPLOYEES IN THE UNIT).

1923-72-R: LOCAL UNION 329, INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK & DISTILLERY WORKERS OF AMERICA, A.F.L., C.I.O., C.L.C. (APPLICANT) V. BREWERS' WAREHOUSING COMPANY LIMITED (RESPONDENT) V. EMPLOYEE (OBJECTOR).

UNIT #1: "ALL CLERICAL EMPLOYEES OF THE RESPONDENT IN ITS WAREHOUSE AND GROUP-OFFICE OPERATIONS AT OTTAWA, SAVE AND EXCEPT FOREMAN OR MANAGER, PERSONS ABOVE THE RANK OF FOREMAN OR MANAGER, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (7 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

UNIT #2: "ALL CLERICAL EMPLOYEES OF THE RESPONDENT REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK IN ITS WAREHOUSE AND GROUP-OFFICE OPERATIONS AT OTTAWA, SAVE AND EXCEPT FOREMAN OR MANAGER AND PERSONS ABOVE THE RANK OF FOREMAN OR MANAGER." (3 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

UNIT #3: "ALL CLERICAL EMPLOYEES OF THE RESPONDENT IN ITS DISTRICT-OFFICE OPERATIONS AT OTTAWA, SAVE AND EXCEPT FOREMAN OR MANAGER AND PERSONS ABOVE THE RANK OF FOREMAN OR MANAGER, AND SECRETARY TO THE DISTRICT MANAGER." (NO EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES). (FOR PURPOSES OF CLARITY, THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT THE DISTRICT SUPERVISOR IS NOT INCLUDED IN BARGAINING UNIT #3.).

1946-72-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. HEATHROW CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF WATERLOO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

1949-72-R: BRICKLAYERS, MASONS & PLASTERERS INTERNATIONAL UNION OF AMERICA, LOCAL 13 (APPLICANT) V. MENARD BROTHERS LIMITED (RESPONDENT).

UNIT: "ALL BRICKLAYERS AND BRICKLAYERS' APPRENTICES, STONEMASONS AND STONEMASONS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE UNITED COUNTIES OF STORMONT, DUNDAS AND GLENGARRY, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

(SEE DECISION [1972] OLRB REP. 460).

1950-72-R: UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL 599 (APPLICANT) V. GIBSON PLUMBING LIMITED (RESPONDENT).

UNIT: "ALL PLUMBERS AND PLUMBERS' APPRENTICES, STEAMFITTERS AND STEAMFITTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF SIMCOE, THE DISTRICT OF MUSKOKA AND THE TOWNSHIPS OF RAMA, MARA AND THORAH IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

1955-72-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 837 (APPLICANT) V. CADILLAC DEVELOPMENT CORPORATION LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF WENTWORTH AND THE TOWNSHIP OF NASSAGAWEYA AND THE TOWN OF BURLINGTON IN THE COUNTY OF HALTON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (12 EMPLOYEES IN THE UNIT).

1958-72-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (APPLICANT) V. TRUCO CANADA LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT NORTH BAY, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (18 EMPLOYEES IN THE UNIT).

1960-72-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL UNION #493 (APPLICANT) V. J.P. ROSS PLASTERING (NORANDA) LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT WITHIN A FIFTY MILE RADIUS OF THE TIMMINS FEDERAL BUILDING, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

1965-72-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL UNION 493 (APPLICANT) V. MURHAN CONSTRUCTION LTD. (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT WITHIN A RADIUS OF THIRTY-FIVE MILES FROM THE CITY OF SUDBURY FEDERAL BUILDING, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

1974-72-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (APPLICANT) V. STANDARD TUBE CANADA LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (10 EMPLOYEES IN THE UNIT).

1976-72-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL UNION No. 597 (APPLICANT) V. MAJOR MASONRY (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF ONTARIO (EXCEPT THE TOWNSHIPS OF PICKERING, RAMA, MARA AND THORAH) AND THE COUNTY OF DURHAM (EXCEPT THE TOWNSHIP OF HOPE), SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

1985-72-R: LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL UNION No. 597 (APPLICANT) V. J. C. CONTRACTORS LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF ONTARIO (EXCEPT THE TOWNSHIPS OF PICKERING, RAMA, MARA AND THORAH) AND THE COUNTY OF DURHAM (EXCEPT THE TOWNSHIP OF HOPE) SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE REPRESENTATIONS OF THE PARTIES.).

2005-72-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 1669 (APPLICANT) V. ALPINE DRYWALL LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE DISTRICT OF KENORA, INCLUDING THE PATRICIA PORTION, ENGAGED IN THE INSTALLATION AND ERECTION OF DRYWALL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

2015-72-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. FRAMAT CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WITHIN A RADIUS OF THIRTY-FIVE MILES FROM THE CITY OF SUDBURY FEDERAL BUILDING ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

2016-72-R: BRICKLAYERS, MASONS & PLASTERERS INTERNATIONAL UNION OF AMERICA, LOCAL 13 (APPLICANT) V. RHEAL BINETTE, CONST. LTD. (RESPONDENT).

UNIT: "ALL BRICKLAYERS AND BRICKLAYERS' APPRENTICES, STONEMASONS AND STONEMASONS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE UNITED

COUNTIES OF STORMONT, DUNDAS AND GLENGARRY, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

2017-72-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. F. A. TUCKER (ONTARIO) LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE DISTRICT OF KENORA, INCLUDING THE PATRICIA PORTION ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (8 EMPLOYEES IN THE UNIT).

APPLICATIONS CERTIFIED SUBSEQUENT TO PRE-HEARING VOTE

1327-71-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE DOCTORS HOSPITAL (RESPONDENT) V. INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796 (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT TORONTO, SAVE AND EXCEPT PROFESSIONAL MEDICAL STAFF, GRADUATE NURSING STAFF, UNDERGRADUATE NURSES, GRADUATE PHARMACISTS, UNDERGRADUATE PHARMACISTS, GRADUATE DIETITIANS, STUDENT DIETITIANS, TECHNICAL PERSONNEL, SUPERVISORS, FOREMEN, PERSONS ABOVE THE RANKS OF SUPERVISOR AND FOREMAN AND HOUSE-KEEPING STAFF, OFFICE AND CLERICAL STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS IN THE BOILER ROOM OF THE RESPONDENT." (221 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED		
VOTERS' LIST		192
NUMBER OF PERSONS WHO CAST BALLOTS	143	
NUMBER OF SPOILED BALLOTS	1	
BALLOTS SEGREGATED AND NOT COUNTED	11	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	77	
NUMBER OF BALLOTS MARKED AGAINST		
APPLICANT	54	

1539-71-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 796 (APPLICANT) V. CAMPEAU CORPORATION LIMITED (RESPONDENT) V. CANADIAN CONSTRUCTION, BUILDING MAINTENANCE AND GENERAL WORKERS' UNION, (N.C. C.L.) (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT OTTAWA EMPLOYED IN ITS MANUFACTURING OPERATIONS, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS COVERED BY SUBSISTING COLLECTIVE AGREEMENTS." (222 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE SUBMISSIONS OF THE PARTIES). (FOR THE PURPOSE OF CLARITY THE BOARD NOTED THE AGREEMENT OF THE PARTIES - (A) THAT CLERICAL EMPLOYEES EMPLOYED IN THE WAREHOUSE AND FACTORY ARE NOT INCLUDED IN THE BARGAINING UNIT; (B) THAT PERSONS EMPLOYED AS FIELD STAFF ARE NOT INCLUDED IN THE BARGAINING UNIT.).

NUMBER OF NAMES OF PERSONS ON REVISED		
VOTERS' LIST		228
NUMBER OF PERSONS WHO CAST BALLOTS	189	
BALLOTS SEGREGATED AND NOT COUNTED	2	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	170	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF INTERVENER	17	

1811-72-R: TEXTILE WORKERS UNION OF AMERICA, CLC, AFL-CIO (APPLICANT) V. KEMP PRODUCTS LIMITED (RESPONDENT) V. EMPLOYEE'S ASSOCIATION OF KEMP PRODUCTS 1966 (INTERVENER #1) V. INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (INTERVENER #2).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT LONDON, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANKS OF FOREMAN AND FORELADY, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (108 EMPLOYEES IN THE UNIT). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

NUMBER OF NAMES OF PERSONS ON REVISED		
VOTERS' LIST		89
NUMBER OF PERSONS WHO CAST BALLOTS	89	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	74	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF INTERVENER #1	15	

1817-72-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (APPLICANT) V. THE PRESTOLITE COMPANY, DIVISION OF ELTRA OF CANADA LIMITED (RESPONDENT) V. CANADIAN UNION OF OPERATING ENGINEERS (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS PLANT IN VAUGHAN TOWNSHIP, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, LABORATORY TECHNICIANS AND EMPLOYEES CURRENTLY REPRESENTED BY THE APPLICANT." (4 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST		4
NUMBER OF PERSONS WHO CAST BALLOTS	4	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	4	
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER	0	

APPLICATIONS CERTIFIED SUBSEQUENT TO POST-HEARING VOTE

1606-71-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL UNION #493 (APPLICANT) V. MATTHEWS GROUP LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT WITHIN A RADIUS OF THIRTY-FIVE MILES FROM THE CITY OF SUDBURY FEDERAL BUILDING, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (33 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		18
NUMBER OF PERSONS WHO CAST BALLOTS	17	
BALLOTS SEGREGATED AND NOT COUNTED	1	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	13	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	3	

1672-71-R: CANADIAN UNION OF GENERAL EMPLOYEES (APPLICANT) V. VERSA-FOOD SERVICES LIMITED (FOOD MANAGEMENT SERVICES) QUEEN ELIZABETH HOSPITAL, TORONTO (RESPONDENT) V. CANADIAN UNION OF PUBLIC EMPLOYEES (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT THE QUEEN ELIZABETH HOSPITAL IN METROPOLITAN TORONTO, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, DIETITIANS, STUDENTS DIETITIANS, CHEF, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (60 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		57
NUMBER OF PERSONS WHO CAST BALLOTS	52	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	36	
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER	15	
NUMBER OF BALLOTS MARKED NO TRADE UNION	1	

1673-71-R: CANADIAN UNION OF GENERAL EMPLOYEES (APPLICANT) v. VERSA-FOOD SERVICES LIMITED (FOOD MANAGEMENT SERVICES) QUEEN ELIZABETH HOSPITAL, TORONTO (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AT THE QUEEN ELIZABETH HOSPITAL IN METROPOLITAN TORONTO, SAVE AND EXCEPT SUPERVISORS AND PERSONS ABOVE THE RANK OF SUPERVISOR." (32 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		33
NUMBER OF PERSONS WHO CAST BALLOTS	22	
NUMBER OF SPOILED BALLOTS	1	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	20	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	1	

APPLICATIONS FOR CERTIFICATION DISMISSED DURING MAY

NO VOTE CONDUCTED

1324-71-R: LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527 (APPLICANT) v. MERCURY DEVELOPMENT CORPORATION LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS). (6 EMPLOYEES).

1504-71-R: WAREHOUSEMEN AND MISCELLANEOUS DRIVERS UNION, LOCAL 419 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) v. AJAX AND PICKERING GENERAL HOSPITAL (RESPONDENT) v. CANADIAN UNION OF PUBLIC EMPLOYEES (INTERVENER #1) v. NURSES' ASSOCIATION AJAX AND PICKERING GENERAL HOSPITAL (INTERVENER #2). (22 EMPLOYEES).

(SEE DECISION [1972] OLRB REP. 477).

1703-71-R: SERVICE EMPLOYEES UNION LOCAL 268 AFFILIATED WITH THE S.E.I.U. AF OF L., C.I.O., & C.L.C. (APPLICANT) V. GORDON A. MAC-EACHERN LIMITED, 21 MCCAUL STREET, TORONTO 133, ONTARIO (RESPONDENT). (27 EMPLOYEES).

(SEE DECISION [1972] OLRB REP. 404).

1708-71-R: THE CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. RENFREW RECREATION COMMISSION (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (29 EMPLOYEES).

1764-71-R: DUFFERIN-PEEL COUNTY SEPARATE SCHOOL BOARD CARETAKERS AND MAINTENANCE ASSOCIATION (APPLICANT) V. DUFFERIN-PEEL COUNTY ROMAN CATHOLIC SEPARATE SCHOOL BOARD (RESPONDENT). (84 EMPLOYEES).

1792-71-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. MERCHANTS SPEEDY DELIVERY LIMITED (RESPONDENT) V. TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL 880 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (INTERVENER). (4 EMPLOYEES).

(SEE DECISION [1972] OLRB REP. 397).

1870-72-R: GENERAL TRUCK DRIVERS' UNION LOCAL 938 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. M. J. CAMPBELL LIMITED (RESPONDENT). (34 EMPLOYEES).

1873-72-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL 837 (APPLICANT) V. BORDER MASONRY (RESPONDENT). (4 EMPLOYEES).

1925-72-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL UNION #38 (APPLICANT) V. C. A. PITTS ENGINEERING CONSTRUCTION LTD. (RESPONDENT). (29 EMPLOYEES).

1932-72-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA LOCAL 837 (APPLICANT) V. LEO CONTRACTING COMPANY LIMITED (RESPONDENT). (6 EMPLOYEES).

1972-72-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 607 (APPLICANT) V. SCOTT-JACKSON CONSTRUCTION LIMITED (RESPONDENT). (10 EMPLOYEES).

CERTIFICATION DISMISSED SUBSEQUENT TO PRE-HEARING VOTE

1743-71-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. UNIVERSITY OF WINDSOR (RESPONDENT) v. INTERNATIONAL UNION, UNITED PLANT GUARD WORKERS OF AMERICA AMALGAMATED PLANT GUARDS, LOCAL 1958 (INTERVENER).

VOTING CONSTITUENCY: "ALL LIBRARY PERSONNEL EMPLOYED BY THE RESPONDENT AT ITS MAIN LIBRARY AND FACULTY OF EDUCATION LIBRARY AT WINDSOR, SAVE AND EXCEPT DEPARTMENT HEADS, PERSONS ABOVE THE RANK OF DEPARTMENT HEAD, PROFESSIONAL LIBRARIANS, ONE SECRETARY TO EACH THE LIBRARIAN AND DEPUTY LIBRARIAN, PERSONS REPRESENTED FOR COLLECTIVE BARGAINING PURPOSES BY THE INTERNATIONAL UNION, UNITED PLANT GUARD WORKERS OF AMERICA AMALGAMATED PLANT GUARDS, LOCAL 1958; CANADIAN UNION OF PUBLIC EMPLOYEES LOCAL 1001; CANADIAN UNION OF PUBLIC EMPLOYEES LOCAL 1393; CANADIAN UNION OF OPERATING ENGINEERS LOCAL 102; AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (109 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	80
NUMBER OF PERSONS WHO CAST BALLOTS	80
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	40
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	40

1772-71-R: TEXTILE WORKERS UNION OF AMERICA, CLC, AFL-CIO (APPLICANT) v. FABERGE OF CANADA LIMITED (RESPONDENT).

VOTING CONSTITUENCY: "ALL EMPLOYEES IN THE TIP TOP PRODUCTS DIVISION OF THE RESPONDENT AT NEWMARKET, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANKS OF FOREMAN AND FORELADY, OFFICE CLERICAL AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (66 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	61
NUMBER OF PERSONS WHO CAST BALLOTS	61
BALLOTS SEGREGATED AND NOT COUNTED	3
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	26
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	32

1773-71-R: INTERNATIONAL MOLDERS & ALLIED WORKERS UNION (APPLICANT)
V. PURE METAL TINNING CO. LIMITED (RESPONDENT).

VOTING CONSTITUENCY: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, HEAD SHIPPER, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (59 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON VOTERS'		
LIST		55
NUMBER OF PERSONS WHO CAST BALLOTS	53	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	15	
NUMBER OF BALLOTS MARKED AGAINST		
APPLICANT	38	

1783-71-R: CANADIAN UNION OF GENERAL EMPLOYEES (C.U.G.E.) (APPLICANT)
V. TEMPLETON SUR-LOK LIMITED (RESPONDENT) V. TEXTILE WORKERS UNION OF AMERICA, CLC, AFL-CIO (INTERVENER).

VOTING CONSTITUENCY: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE AND SALES STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (51 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON VOTERS'		
LIST		52
NUMBER OF PERSONS WHO CAST BALLOTS	50	
NUMBER OF SPOILED BALLOTS	1	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	21	
NUMBER OF BALLOTS MARKED AGAINST		
APPLICANT	28	

1793-71-R: UNITED TEXTILE WORKERS OF AMERICA (APPLICANT) V. HANSON MILLS LIMITED (RESPONDENT).

VOTING CONSTITUENCY: "ALL EMPLOYEES OF THE RESPONDENT AT RENFREW, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (33 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		32
NUMBER OF PERSONS WHO CAST BALLOTS		32
NUMBER OF SPOILED BALLOTS	1	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	7	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	24	

1814-72-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) V. MARLYN SUPERIOR PRODUCTS LIMITED (RESPONDENT).

VOTING CONSTITUENCY: "ALL EMPLOYEES OF THE RESPONDENT AT ITS VENEER AND MOULDED PLYWOOD MANUFACTURING OPERATION AT GRAVENHURST, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (38 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		34
NUMBER OF PERSONS WHO CAST BALLOTS		31
BALLOTS SEGREGATED AND NOT COUNTED	1	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	10	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	20	

1844-72-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. STANTON PIPES LIMITED (RESPONDENT).

VOTING CONSTITUENCY: "ALL EMPLOYEES OF THE RESPONDENT AT ITS KENILWORTH AVENUE NORTH PLANT IN HAMILTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, NON-DESTRUCTIVE TESTING TECHNICIAN, LABORATORY STAFF, SHIPPER AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (102 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		94
NUMBER OF PERSONS WHO CAST BALLOTS		91
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	43	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	48	

1875-72-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) V. LORENZO NADEAU (RESPONDENT).

VOTING CONSTITUENCY: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED IN MIS-SANABIE, TOWNSHIP 46, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE, SALES STAFF, SCALERS, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (38 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		33
NUMBER OF PERSONS WHO CAST BALLOTS	29	
BALLOTS SEGREGATED AND NOT COUNTED	2	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	5	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	22	

1914-72-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) v. MOHAWK CANOE MANUFACTURING LIMITED (RESPONDENT).

VOTING CONSTITUENCY: "ALL EMPLOYEES OF THE RESPONDENT AT TILLSONBURG, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (53 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		53
NUMBER OF PERSONS WHO CAST BALLOTS	51	
NUMBER OF SPOILED BALLOTS	1	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	22	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	28	

CERTIFICATION DISMISSED SUBSEQUENT TO POST-HEARING VOTE

598-71-R: CANADIAN MERCHANDISING EMPLOYEES' UNION (APPLICANT) v. STEINBERG'S LIMITED (RESPONDENT) v. RETAIL AND FOOD EMPLOYEES LOCAL UNION 175, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (INTERVENER #1) v. UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 93 (INTERVENER #2) v. RETAIL CLERKS INTERNATIONAL ASSOCIATION (INTERVENER #3) v. RETAIL CLERKS UNION, LOCAL NO. 486 CHARTERED BY THE RETAIL CLERKS INTERNATIONAL ASSOCIATION (INTERVENER #4).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN ITS MIRACLE MART DIVISION IN THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON, SAVE AND EXCEPT GROUP MANAGERS, PERSONS ABOVE THE RANK OF GROUP MANAGER, SECURITY OFFICERS, SHOPPERS, GUARDS AND OFFICE STAFF." (283 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	247
NUMBER OF PERSONS WHO CAST BALLOTS	203
NUMBER OF SPOILED BALLOTS	1
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	20
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER, RETAIL CLERKS UNION, LOCAL No. 486	182

1509-71-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 1089 (APPLICANT) V. COHEN CONSTRUCTION (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF LAMBTON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	5
NUMBER OF PERSONS WHO CAST BALLOTS	4
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	0
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	4

1746-71-R: LOCAL 173, INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK AND DISTILLERY WORKERS OF AMERICA, AFL-CIO, CLC (APPLICANT) V. KITCHENER BEVERAGES LTD. (RESPONDENT).

VOTING CONSTITUENCY: "ALL EMPLOYEES OF THE RESPONDENT AT KITCHENER, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF AND PERSONS COVERED BY SUBSISTING COLLECTIVE AGREEMENTS BETWEEN THE APPLICANT AND THE RESPONDENT." (4 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	4
NUMBER OF PERSONS WHO CAST BALLOTS	4
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	2
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	2

1830-72-R: SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, LOCAL UNION 540 (APPLICANT) V. SUBURBAN METAL INDUSTRIES LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT SCARBOROUGH, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (18 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	18
NUMBER OF PERSONS WHO CAST BALLOTS	17
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	8
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	9

APPLICATIONS FOR CERTIFICATION WITHDRAWN DURING MAY

1695-71-R: CANADIAN UNION OF OPERATING ENGINEERS - LOCAL 101 (APPLICANT) V. TORONTO GENERAL HOSPITAL (RESPONDENT). (21 EMPLOYEES).

1938-72-R: C & C YACHTS EMPLOYEES ASSOCIATION (APPLICANT) V. C & C YACHTS MANUFACTURING LIMITED (RESPONDENT). (140 EMPLOYEES).

1961-72-R: AMERICAN FEDERATION OF TECHNICAL ENGINEERS, A. F. OF L. - C. I. O., C. L. C. (APPLICANT) V. SARNIA INSPECTION COMPANY LIMITED (RESPONDENT). (21 EMPLOYEES).

1971-72-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. DRUMMOND, MCCALL & Co. LIMITED (RESPONDENT). (115 EMPLOYEES).

2006-72-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (APPLICANT) V. NISSAN AUTOMOBILE COMPANY (CANADA) LTD. (RESPONDENT). (40 EMPLOYEES).

2020-72-R: AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA A.F.L., C.I.O., C.L.C. (APPLICANT) V. SPRUCELEIGH FARMS A DIVISION OF CANADA PACKERS LTD. (RESPONDENT) V. LOCAL 313, AMERICAN FEDERATION OF GRAIN MILLERS, CLC (INTERVENER) V. GROUP OF EMPLOYEES (OBJECTORS). (26 EMPLOYEES).

2040-72-R: THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS LOCAL UNION 721 (APPLICANT) V. ROGER FOREST INCORPORATED (RESPONDENT). (4 EMPLOYEES).

APPLICATION FOR DECLARATION TERMINATING BARGAINING RIGHTS DISPOSED
OF DURING MAY

1947-72-R: MICHAEL WADE CONSTRUCTION CO. LTD. (APPLICANT) V. BUILDING TRADES COUNCIL (RESPONDENT). (NO EMPLOYEES). (WITHDRAWN).

APPLICATIONS FOR DECLARATION THAT STRIKE UNLAWFUL DISPOSED OF DURING
MAY

1716-71-U: GILBARCO CANADA LTD. (APPLICANT) V. HANK JANSEN, CHARLES D. THOMPSON, LEE BALDWIN, ANNA BELLE BARKLEY AND DOUGLAS E. McLEAN (RESPONDENTS). (WITHDRAWN).

1861-72-U: ASSOCIATED FREEZERS OF CANADA LIMITED (APPLICANT) V. WAREHOUSEMEN AND MISCELLANEOUS DRIVERS LOCAL 419, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (RESPONDENT).

- AND -

1862-72-U: ASSOCIATED FREEZERS OF CANADA LIMITED (APPLICANT) V. GUY BERNIER, RONALD HOWK, AL MORRIS, STANLEY PERRY, CLIFFORD STACEY AND RALPH STRINGER (RESPONDENTS). (GRANTED).

(SEE DECISION [1972] OLRB REP. 445).

1871-72-U: LOCAL UNION 46 OF THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA (APPLICANT) V. AUTOMATIC FUELS LIMITED, DEPENDABLE SERVICE (RESPONDENTS). (DISMISSED).

(SEE DECISION [1972] OLRB REP. 515).

1883-72-U: BATHE AND McLELLAN CONSTRUCTION LIMITED (APPLICANT) V. GEORGE GALE (RESPONDENT). (WITHDRAWN).

1904-72-U: QUIGLEY CONSTRUCTION COMPANY LIMITED (APPLICANT) V. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (RESPONDENT). (GRANTED).

(SEE DECISION [1972] OLRB REP. 526).

1963-72-U: INTERNATIONAL UNION OF ELEVATOR CONSTRUCTORS, LOCAL 50 (APPLICANT) V. DOVER CORPORATION (CANADA) LTD., TURNBULL ELEVATOR DIVISION (RESPONDENT). (DISMISSED).

(SEE DECISION [1972] OLRB REP. 540).

APPLICATIONS FOR CONSENT TO PROSECUTE DISPOSED OF DURING MAY

1407-71-U: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL 18 (APPLICANT) V. THE WOOD, WIRE AND METAL LATHERS' INTERNATIONAL UNION, LOCAL 145, AND KENNETH WELLER (RESPONDENTS).

- AND -

1408-71-U: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL 18 (APPLICANT) V. THE WOOD, WIRE AND METAL LATHERS' INTERNATIONAL UNION, LOCAL 145, AND KENNETH WELLER (RESPONDENTS).

- AND -

1513-71-U: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL 18 (APPLICANT) V. THE WOOD, WIRE AND METAL LATHERS' INTERNATIONAL UNION, LOCAL 145, AND KENNETH WELLER (RESPONDENTS).

- AND -

1514-71-U: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL 18 (APPLICANT) V. THE WOOD, WIRE AND METAL LATHERS' INTERNATIONAL UNION, LOCAL 145, AND KENNETH WELLER (RESPONDENTS). (GRANTED).

1426-71-U: ADVANCED WIRE DIE LIMITED (APPLICANT) V. INTERNATIONAL CHEMICAL WORKERS UNION, LOCAL 552 AND KENNETH V. ROGERS (RESPONDENT). (WITHDRAWN).

1609-71-U: THE BUDD AUTOMOTIVE COMPANY OF CANADA LIMITED (APPLICANT) V. THOSE PERSONS NAMED IN SCHEDULE "A" ATTACHED HERETO (RESPONDENTS). (WITHDRAWN).

1662-71-U: SERVICE EMPLOYEES' UNION LOCAL 204 (APPLICANT) V. EXTENDICARE (CANADA) LIMITED (RESPONDENT). (WITHDRAWN).

1663-71-U: LONDON AND DISTRICT BUILDING SERVICE WORKERS, LOCAL 220 (APPLICANT) V. EXTENDICARE (CANADA) LIMITED (RESPONDENT). (WITHDRAWN).

1670-71-U: SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 204 (APPLICANT) V. DELZOTTO PROPERTY MANAGEMENT (RESPONDENT). (WITHDRAWN).

1767-71-U: THE ASBESTOS COVERING COMPANY LIMITED (APPLICANT) V. J. AINSWORTH AND OTHERS NAMED ON THE ATTACHED LIST (RESPONDENT). (WITHDRAWN).

1781-71-U: LOCAL 97, WOOD, WIRE AND METAL LATHERS INTERNATIONAL UNION (APPLICANT) V. NORTHDOWN DRYWALL AND CONSTRUCTION LIMITED (RESPONDENT).

- AND -

1782-71-U: LOCAL 97 OF THE WOOD, WIRE AND METAL LATHERS INTERNATIONAL UNION (APPLICANT) V. LOCAL 562 OF THE WOOD, WIRE AND METAL LATHERS INTERNATIONAL UNION (RESPONDENTS). (DISMISSED).

(SEE DECISION [1972] OLRB REP. 428).

1872-72-U: CANADIAN UNION OF PUBLIC EMPLOYEES LOCAL 43 (APPLICANT) V. MUNICIPALITY OF METROPOLITAN TORONTO (RESPONDENT). (WITHDRAWN).

1895-72-U: CANADIAN MERCHANDISING EMPLOYEES' UNION (APPLICANT) V. STEINBERG'S LIMITED (RESPONDENT). (WITHDRAWN).

1905-72-U: QUIGLEY CONSTRUCTION COMPANY LIMITED (APPLICANT) V. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (RESPONDENT). (WITHDRAWN).

1906-72-U: QUIGLEY CONSTRUCTION COMPANY LIMITED (APPLICANT) V. DAVE STEWART, LOU STEWART, BOB INGLIS, KEN GRAHAM, MORLEY HATT AND DANNY BROWN (RESPONDENTS). (WITHDRAWN).

1907-72-U: QUIGLEY CONSTRUCTION COMPANY LIMITED (APPLICANT) V. MR. JACK REDSHAW (RESPONDENT). (WITHDRAWN).

COMPLAINTS UNDER SECTION 79 (FORMERLY S. 65) (UNFAIR LABOUR PRACTICE)

DISPOSED OF DURING MAY

832-71-U: ANTHONY PITOSCIA (COMPLAINANT) V. SEVEN-UP (ONTARIO) LIMITED (RESPONDENT).

- AND -

1056-71-U: ANTHONY PITOSCIA (COMPLAINANT) V. SEVEN-UP (ONTARIO) LIMITED (RESPONDENT). (DISMISSED).

(SEE DECISION [1972] OLRB REP. 551).

1148-71-U: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (COMPLAINANT) V. GABCO LIMITED (RESPONDENT). (WITHDRAWN).

1167-71-U: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (COMPLAINANT) V. GABCO LIMITED (RESPONDENT). (WITHDRAWN).

1417-71-U: CANADIAN UNION OF PUBLIC EMPLOYEES (COMPLAINANT) V. TORONTO GENERAL HOSPITAL (RESPONDENT). (DISMISSED).

(SEE DECISION [1972] OLRB REP. 463).

1498-71-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V. GIDON INDUSTRIES LIMITED (RESPONDENT). (DISMISSED).

1525-71-U: THE CANADIAN UNION OF OPERATING ENGINEERS (COMPLAINANT) V. 400 UNIVERSITY AVENUE PROSPECT COMPANY (RESPONDENT). (DISMISSED).

(SEE DECISION [1972] OLRB REP. 449).

1592-71-U: LONDON AND DISTRICT BUILDING SERVICE WORKERS' UNION, LOCAL 220, S.E.I.U., A.F. OF L., C.I.O., C.L.C. (COMPLAINANT) V. EXTENDICARE (CANADA) LTD. (RESPONDENT). (DISMISSED).

(SEE DECISION [1972] OLRB REP. 441).

1597-71-U: SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 183 (COMPLAINANT) V. BEACON HILL LODGES OF CANADA LTD. (RESPONDENT). (WITHDRAWN).

1676-71-U: MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES, LOCAL 647 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (COMPLAINANT) V. HOME BREAD BAKERY, A DIVISION OF CANADIAN FOOD PRODUCTS SALES LIMITED (RESPONDENT). (GRANTED).

(SEE DECISION [1972] OLRB REP. 537).

1689-71-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V. GIDON INDUSTRIES LIMITED (RESPONDENT). (WITHDRAWN).

1713-71-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V. GIDON INDUSTRIES LIMITED (RESPONDENT). (WITHDRAWN).

1719-71-U: LORRAINE DENNING (COMPLAINANT) V. OIL, CHEMICAL & ATOMIC WORKERS INTERNATIONAL UNION AND ITS LOCAL 9-698 (RESPONDENT). (RESPONDENT). (DISMISSED).

(SEE DECISION [1972] OLRB REP. 521).

1730-71-U: BRIAN F. O'DONNELL (COMPLAINANT) V. AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA AND STEINBERG'S LIMITED OTHERWISE KNOWN AS MIRACLE FOOD MART (RESPONDENTS). (DISMISSED).

(SEE DECISION [1972] OLRB REP. 423).

1755-71-U: AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF N.A., A.F.L., C.I.O., C.L.C. (COMPLAINANT) V. PORT COLBORNE POULTRY LIMITED (RESPONDENT). (WITHDRAWN).

1759-71-U: I. K. TAMIMI, ESQUIRE OF THE TOWNSHIP OF BRAMPTON, IN THE COUNTY OF PEEL (COMPLAINANT) V. MASSEY FERGUSON, ESQUIRE, OF THE MUNICIPALITY OF METROPOLITAN TORONTO, IN THE COUNTY OF YORK (RESPONDENT). (DISMISSED).

(SEE DECISION [1972] OLRB REP. 524).

1766-71-U: ALLAN A. MACKENZIE (COMPLAINANT) V. ARMSTRONG INDUSTRIAL INSULATIONS (A.C. & S) AND ASBESTOS WORKERS UNION LOCAL 95 (RESPONDENTS). (WITHDRAWN).

1780-71-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V. GIDON INDUSTRIES LIMITED (RESPONDENT). (WITHDRAWN).

1794-71-U: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (COMPLAINANT) V. NORTHDOWN SUPPLY EQUIPMENT LTD. (RESPONDENT). (WITHDRAWN).

1795-71-U: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL UNION 141, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (COMPLAINANT) V. CATHCART TRUCK LINES (RESPONDENT). (WITHDRAWN).

1818-72-U: MARTIN L. COSTELLO (COMPLAINANT) V. UNITED ELECTRICAL UNION 504 (RESPONDENT). (DISMISSED).

(SEE DECISION [1972] OLRB REP. 523).

1831-72-U: JOHN W. HOWARD (COMPLAINANT) V. JOHNSON CONTROLS 120 BERMONDSEY ST., TOM PATTERSON, STAN MADDAMS AND I.B.E.W. LOCAL 1966 (RESPONDENTS). (WITHDRAWN).

1832-72-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V. KAMRO LIGHTING PRODUCTS (RESPONDENT). (WITHDRAWN).

1845-72-U: INTERNATIONAL UNION OF DISTRICT 50, ALLIED AND TECHNICAL WORKERS OF THE UNITED STATES AND CANADA (COMPLAINANT) V. STAR STEEL LTD. (RESPONDENT). (WITHDRAWN).

1848-72-U: CANADIAN UNION OF PUBLIC EMPLOYEES (COMPLAINANT) V. ST. THOMAS SANITARY COLLECTION SERVICE LIMITED (RESPONDENT). (WITHDRAWN).

1865-72-U: INTERNATIONAL WOODWORKERS OF AMERICA (COMPLAINANT) V. TEXTURON YARNS LIMITED (RESPONDENT). (WITHDRAWN).

1866-72-U: INTERNATIONAL WOODWORKERS OF AMERICA (COMPLAINANT) V. ATOMIK CONSTRUCTION Co. LTEE. (RESPONDENT). (WITHDRAWN).

1898-72-U: JAMES J. TOBIN (COMPLAINANT) V. LOCAL 1966 I.B.E.W. JOHNSON CONTROLS CHAPTER (RESPONDENT). (WITHDRAWN).

1903-72-U: ANTONIO FABRIZIO (COMPLAINANT) V. STOVE FURNACE & APPLIANCE WORKERS INTERNATIONAL UNION OF N.A. LOCAL 162 & RUDD LIMITED (RESPONDENTS). (WITHDRAWN).

1951-72-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V. GIDON INDUSTRIES LIMITED (RESPONDENT). (WITHDRAWN).

1998-72-U: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (COMPLAINANT) V. BUSH GAMBLE COMPANY LIMITED (RESPONDENT). (WITHDRAWN).

APPLICATION UNDER SECTION 37(3) (FORMERLY S. 34(3)) DISPOSED OF DURING

MAY

744-71-M: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, UAW, AND ITS LOCALS 439 AND 458 (APPLICANTS) V. MASSEY-FERGUSON INDUSTRIES LIMITED (RESPONDENT). (WITHDRAWN).

APPLICATIONS UNDER SECTION 39 (FORMERLY S. 34(A)) DISPOSED OF DURING

MAY

157-70-M: CORNELIS OVERGAAUW (APPLICANT) V. CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 1019 (RESPONDENT TRADE UNION) V. LAMBTON COUNTY BOARD OF EDUCATION (RESPONDENT EMPLOYER). (GRANTED).

916-71-M: NORMAN JOHN FRIEND (APPLICANT) V. THE CANADIAN UNION OF PUBLIC EMPLOYEES, AND ITS LOCAL NO. 1196 (RESPONDENT TRADE UNION) V. THE YORK COUNTY BOARD OF EDUCATION (RESPONDENT EMPLOYER).

1627-71-M: MARK VANDERVLIT (APPLICANT) V. CANADIAN UNION OF PUBLIC EMPLOYEES - C.L.C., ONTARIO HYDRO EMPLOYEES' UNION LOCAL 1000 (RESPONDENT TRADE UNION) V. THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO (RESPONDENT EMPLOYER).

APPLICATION FOR CONSENT TO EARLY TERMINATION OF COLLECTIVE AGREEMENT

1987-72-M: CANADIAN LINEN SUPPLY LTD., OF KITCHENER, AND LONDON (EMPLOYER) V. LAUNDRY AND LINEN DRIVERS AND INDUSTRIAL WORKERS, TEAMSTERS LOCAL 847 (TRADE UNION). (GRANTED).

APPLICATIONS UNDER SECTION 55 (FORMERLY S. 47A) DISPOSED OF DURING

MAY

1616-71-R: THE BRYANT PRESS LIMITED (APPLICANT) V. TORONTO TYPOGRAPHICAL UNION NO. 91, ITU (RESPONDENT) V. GROUP OF EMPLOYEES (INTERVENER). (GRANTED).

UNIT: "ALL OF THE EMPLOYEES OF THE BRYANT PRESS LIMITED AT TORONTO EMPLOYED IN ITS COMPOSING ROOM AND PROOF ROOM, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN."

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST		26
NUMBER OF PERSONS WHO CAST BALLOTS		26
BALLOTS SEGREGATED AND NOT COUNTED	4	
NUMBER OF BALLOTS MARKED IN FAVOUR OF RESPONDENT	8	
NUMBER OF BALLOTS MARKED AGAINST RESPONDENT	14	

1899-72-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL UNION No. 880 (APPLICANT) V. KENT CONCRETE PRODUCTS IN THE COUNTY OF KENT (RESPONDENT) V. CHATHAM CONSTRUCTION WORKERS ASSOCIATION, LOCAL No. 53, AFFILIATED WITH THE CHRISTIAN LABOUR ASSOCIATION OF CANADA (INTERVENER #1) V. C. F. A. OPERATIONS INC. (INTERVENER #2). (DISMISSED).

APPLICATION UNDER SECTION 73(2) (FORMERLY S. 60(2)) (CONTINUATION OF

LOCALS UNDER TRUSTEESHIP)

56-71-T: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA AND LOCAL UNION No. 93, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (GRANTED).

JURISDICTIONAL DISPUTES

844-71-JD: GENERAL CONCRETE LTD. (COMPLAINANT) V. INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL 700 AND LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCALS 506 AND 625 (RESPONDENTS).

(SEE DECISION [1972] OLRB REP. 418).

1454-71-JD: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 493 (COMPLAINANT) V. ELLIS-DON LIMITED (RESPONDENT). (WITHDRAWN).

1508-71-JD: ABE DICK MASONRY LIMITED (COMPLAINANT) V. 1) TRICON CONSTRUCTION CORPORATION; 2) LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 837; 3) UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 18 (RESPONDENTS). (DISMISSED).

1997-72-JD: FRANCON DIVISION OF CANFARGE LTD. (COMPLAINANT) V. LOCAL 93 UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (RESPONDENT #1) V. LOCAL 527 LABOURERS INTERNATIONAL UNION OF NORTH AMERICA (RESPONDENT #2) V. LOUIS DONOLO INC. (RESPONDENT #3). (INTERIM ORDER AND DIRECTION - GRANTED).

(SEE DECISION [1972] OLRB REP. 510).

APPLICATIONS FOR DETERMINATION UNDER SECTION 95(2) (FORMERLY S. 79(2))

DISPOSED OF DURING MAY

854-71-M: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) V. LIVINGSTON TRANSPORTATION LIMITED (RESPONDENT).

(SEE DECISION [1972] OLRB REP. 488).

1804-71-M: THE UNIVERSITY OF WINDSOR (APPLICANT) V. CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 1393 (RESPONDENT).

REFERENCES TO BOARD PURSUANT TO SECTION 96 (FORMERLY S. 79A)

1714-71-M: THE COUNCIL OF PRINTING INDUSTRIES OF CANADA, (REPRESENTING THE ATTACHED LIST OF EMPLOYERS) (EMPLOYER) V. TORONTO PHOTO-ENGRAVERS UNION LOCAL No. 35-P, LPIU AND LOCAL 242, HAMILTON, LPIU (TRADE UNION).

(SEE DECISION [1972] OLRB REP. 453).

1785-71-M: TREMWAYS LIMITED FORMERLY SMELLIE'S TRANSPORT 1969 LTD. (EMPLOYER) V. TEAMSTERS LOCAL UNION No. 879 - AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (TRADE UNION).

1837-72-M: G. M. NELSON WELDING (EMPLOYER) V. INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL 786 (TRADE UNION).

(SEE DECISION [1972] OLRB REP. 481).

APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION - CERTIFICATION

51-70-R: TEXTILE WORKERS UNION OF AMERICA, AFL-CIO-CLC (APPLICANT) V. FEDERAL PACKAGING AND PARTITION COMPANY LIMITED (RESPONDENT) V. FEDERAL PACKAGING EMPLOYEES ASSOCIATION (INTERVENER) V. GROUP OF EMPLOYEES (OBJECTORS). (REQUEST DENIED).

(SEE DECISION [1972] OLRB REP. 483).

18768-70-R: CSAO NATIONAL (INC.) (APPLICANT) V. THE GREATER NIAGARA GENERAL HOSPITAL (RESPONDENT) V. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 772 (INTERVENER). (REQUEST DENIED).

(SEE DECISION [1972] OLRB REP. 544).

18769-70-R: CSAO NATIONAL (INC.) (APPLICANT) V. OSHAWA GENERAL HOSPITAL (RESPONDENT) V. THE CANADIAN UNION OF OPERATING ENGINEERS LOCAL 101 (INTERVENER). (REQUEST DENIED).

18770-70-R: CSAO NATIONAL (INC.) (APPLICANT) V. NIAGARA LABORATORIES, DIVISION OF MEDICAL DATA SCIENCES LIMITED (RESPONDENT). (REQUEST DENIED).

18771-70-R: CSAO NATIONAL (INC.) (APPLICANT) V. THE HAMILTON HEALTH ASSOCIATION (RESPONDENT). (REQUEST DENIED).

18772-70-R: CSAO NATIONAL (INC.) (APPLICANT) V. THE HAMILTON HEALTH ASSOCIATION (RESPONDENT). (REQUEST DENIED).

1497-71-R: INSURANCE EMPLOYEES UNION, LOCAL 1668, C.L.C. (APPLICANT) V. ECONOMICAL MUTUAL INSURANCE COMPANY (RESPONDENT). (REQUEST DENIED).

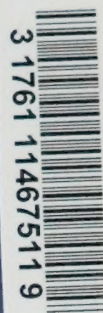
APPLICATION FOR RECONSIDERATION OF BOARD'S DECISION - SECTION 79

(FORMERLY S. 65)

1351-71-U: WILLIAM CAMPBELL (COMPLAINANT) V. INTER-CITY TRUCK LINES LIMITED, AND TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, LOCAL UNION 880 (RESPONDENTS). (REQUEST DENIED).

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